

United States
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

EXAMINER PRINTING COMPANY, a Corporation and WILLIAM RANDOLPH HEARST,

Plaintiffs in Error,

vs.

TAGGART ASTON,

Defendant in Error.

VOLUME II.

(Pages 225 to 455, Inclusive.)

Upon Writ of Error to the United States District Court
of the Northern District of California,
Second Division.

Filed

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**[Stipulation as to Matter Appearing on Cover of
Bartell-Manson Report.]**

It is stipulated by counsel that the matter appearing on the cover of said report in the following language:

“NOTE.—This report does not allow for waters needed by 200,000 A. of irrigable land mentioned in the Grunsky report of July, 1912.
BARTELL.”

was placed on said report in the month of July, 1913, just prior to the time when said report was sent to Mr. O'Shaughnessy in Washington.

[Further Testimony of Plaintiff.]

The plaintiff further testified that the original Bartell-Manson report was never delivered to the Advisory Board of Army Engineers nor to the Secretary of the Interior of the United States. It further appeared in evidence that Marsden Manson, in April, 1912, was incapacitated by illness from further performing the duties of his office as City Engineer, and Mr. C. E. Grunsky was employed by the City and County of San Francisco to make studies of the Mokelumne River and other sources of water supply for the purpose of supplying data to the Advisory Board of Army Engineers; further that John E. Freeman, a consulting engineer, was employed by the City and County of San Francisco to assemble said data and to present the case of the City and County of San Francisco with respect thereto, to the Secretary of the Interior and the Advisory Board of Army Engineers. Said report

of said Freeman, entitled "The Hetch Hetchy Water Supply for San Francisco" was offered and received in evidence on the part of the plaintiff, and the following extracts therefrom read to the jury:

Extracts from Report of John E. Freeman.

"THE MOKELUMNE RIVER AS AN ALTERNATIVE SOURCE TO THE TUOLUMNE.

[188]

The Mokelumne is next in the order of proximity to the Tuolumne after the Stanislaus. The possibility of its use by San Francisco has several times been brought forward by promoters and has received some publicity thru the advertising of the claims by the Sierra and Blue Lakes Water Company, that it could provide the City of San Francisco with an adequate Supply of water, coupled with an electric power project from which the income would pay a profit on the whole enterprise.

THIS SOURCE SEVERAL TIMES INVESTIGATED FOR SAN FRANCISCO AND REJECTED.

The City Engineer, Mr. Manson, happened to have made brief studies and an adverse report on these Mokelumne sources six years previously, but conformably to the request of Secretary Ballinger began further investigations, comprising surveys of the principal reservoir sites named by the present promoters. Upon Mr. Manson's disability by illness, already referred to, the continuation of the Mokelumne investigation was turned over to Mr. C. E. Grunsky, who had himself studied this river as a possible source for San Francisco eleven years

ago and also had been familiar with many of its features from boyhood, his early home having been in Stockton. Mr. Grunsky's full report, prepared in July, 1912, was filed with the Advisory Board of Army Engineers under date of August 1, 1912, in triplicate, comprising, with appendices, 174 typewritten pages and numerous tables and diagrams. The following is a very brief abstract of the report as filed. Copious extracts from it are presented in Appendix 18.

In the report filed Mr. Grunsky notes that the possibility of supplying San Francisco from these sources was investigated by Col. G. H. Mendell (Municipal Reports 1876-77), and refers to his own investigation of 1901 and to that of these Mokelumne sources made for City Engineer Woodward in 1906.

All of these previous investigations had so plainly brought out the disadvantages of the Mokelumne that Mr. Grunsky evidently was impressed with the un wisdom of spending any large sum of money at the present time for further field work in detail, and so bases his statement upon the facts already on record. Moreover, there was not time for any extensive new field work after Mr. [189] Grunsky was called in to take up the work which Mr. Manson had not completed at the time of his illness. I have not visited this region myself, but have carefully reviewed the data presented by Mr. Manson and Mr. Grunsky, . . .

To these I need only add that an inspection of the large scale map makes plain the fact that all of

the advantages of damsite, length of aqueduct quality of storage reservoirs, future water power possibilities, and the great advantage of not having to seek some additional source, at a time when sources equal to those now available are impossible to obtain, are all so plainly and strongly on the side of the Hetch Hetchy and Upper Tuolumne that I do not believe it advisable to expend the \$15,000 to \$30,000. more or less, which exploration and complete surveys for thoroughly working out the best possible project for a municipal water supply from the Mokelumne would cost.”

The witness Taggart Aston having testified that following the discovery by him of the so-called Bartell-Manson report in the City Engineer’s office, he had disclosed the fact of that discovery to members of Congress of the United States, and further, that the report had been discovered by him about June 13, 1913, and that the Public Lands Committee of the House of Representatives had convened about the 23d of June, 1913, counsel for the plaintiff asked the witness the following question: [190]

“MR. BLAKE.—Q. I will ask you now to state what considerations moved you to make any communications which you may have made to members of Congress in relation to this report.”

Counsel for the defendants objected to said question as immaterial, irrelevant and incompetent, calling for the opinion and conclusion of the witness, and for a state of mind that these defendants could not be bound by, unless the matter appeared of rec-

ord with the public action of the witness. The Court overruled said objection and Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 31.

The said question the witness answered:

“My main reason, although I had several reasons, was the fact that I had received from Mr. Wilsey copies of, I think, two letters from gentlemen, one in London and another in Paris, in which they said that they had heard—they were connected, they were Mr. Wilsey’s associates who were going to endeavor to finance this proposition and were therefore greatly interested—in which they said that a Mr. Freeman had made a report and that they both intended writing to Mr. Freeman, and they were anxious to see his report, so that they would get information from that source as well as from my report. Now, upon an examination of the Freeman report, I found that Mr. Freeman, not only in his own report, but in his discussion of other reports—both in discussion and in extracts from other reports which were included in his main report, had grossly misrepresented the Mokelumne supply to such an extent that it would have been quite impossible for us to have financed our project in France, particularly when such an eminent gentleman as Mr. Freeman, and who was so well-known in Europe, had made statements that there was not the supply that I in my report had claimed. I concluded that Mr. Freeman, being an eminent engineer and myself only a comparatively obscure

engineer, I concluded that his report would be given much greater weight than mine. I knew from my own surveys, as well as from the suppressed report, as well as from conclusions of Mr. Manson, that this supply was sufficient and that there was the water there. I therefore came to the conclusion that in duty to my clients these misrepresentations had to be removed and that the Freeman report had done my clients very grave injustice.”

[191]

The plaintiff on cross-examination further testified that when he stated in his letter of June 24, 1913, to Mr. Scott Ferris, Chairman of the Public Lands Committee, “I am sure that this act of trickery should prompt your committee to grant opportunity and time for the most rigid inquiry as (to what) in ordinary business life might be termed the city’s attempt to loot the Nation of Hetch Hetchy under false pretenses,” he intended to convey what he felt at the time he was testifying; that he had asked to delay the Hetch Hetchy matter and for the appointment of a commission to hear him and to hear all the injustices that were committed by endeavoring to secure the Hetch Hetchy matter by gross misrepresentations and trampling upon the rights of the owners of other properties. He also testified that he had never seen Mr. Grunsky’s full report to the Board of Army Engineers on the Mokelumne supply, and that when he made the charge against the City of San Francisco as above stated he had many other reasons than that the Bartell report had not been

presented as such to the army board. That among such other reasons were the following:

Absolute gross misrepresentation of his clients' property in the Freeman report; that the Bartell report was not the only circumstance, that it was the culminating circumstance that made him feel indignant.

— That he considered that, as the Secretary of the Interior had specifically appointed the army board for a certain purpose and as that purpose was to discover if any other source plus Lake Eleanor was available to the City of San Francisco, Hetch Hetchy should only be included as an absolute necessity; that he knew that Mr. Grunsky had made a report which dealt only with the Mokelumne, but that his making the charge that [192] the Bartell-Manson report had been withheld from the Army board had nothing whatever to do with the Grunsky report; that this Bartell report, of which he had a photographic copy, contained a most essential statement made by City Engineer Manson after he and his assistants had been working on it for two years, which he considered a very conclusive and valuable statement for the owners on the Mokelumne River; that the reason why he did not look at the case for San Francisco as presented to the Board of Engineers in the shape of Mr. Grunsky's report, was because he saw a condensation of that report in Mr. Freeman's report, and he felt sure that if Marsden Manson's statement in effect had been repeated in Mr. Grunsky's report, it should have been repeated in the Freeman re-

port; that he considered Mr. Manson's statement the essential part of that report.

The plaintiff also testified on cross-examination that he had read the letter of the Chairman of the Board of Army Engineers in which the latter had stated that if he had seen the Bartell-Manson report it would not have made any difference in the result, and that he (the witness) considered it very regrettable that a man in Colonel Biddle's position should have made such a statement, and that the letter in which it was made was purely self-serving.

On redirect examination the plaintiff testified that he called the letter of Colonel Biddle to Mr. Kent, of July 31, 1913, a self-serving statement, because when Colonel Biddle made the statement that even if the board had had the Bartell report it would not have altered their views, he had never seen the report and so stated later in his letter. The witness also testified that he considered the Bartell-Manson report should have been treated as the report of Mr. Manson [193] because he had corrected it, and notated it, and given his conclusion on it, and initialed it and passed it for final typing.

The witness was asked for other and further considerations upon which he based his statement that the representations of the city in relation to the Mokelumne supply constituted a looting of the Nation of Hetch Hetchy, he had drawn from the Freeman report, which was in evidence as "Plaintiff's Exhibit 36." Whereupon the following occurred:

"The WITNESS.—A. This on page 160 of the report. I think you read this, Mr. Blake. Do you

wish me to point out the significant parts in it here?

Mr. BLAKE.—Q. State in your own way what other considerations moved you to make the representation that the city's report of the availability of the Mokelumne was prejudiced and biased and unfair? A. You have already read this, but I will read the parts of it to which I wish to refer.

'The City Engineer, Mr. Manson, happened to have made brief studies and an adverse report on these sources six years previously.'

There is a conclusion to be drawn from that. The only mention they make of Mr. Manson having made a report was a mention that he had made an adverse report six years before.

'But conformable to the request of Secretary Ballinger began further investigations, comprising surveys of the principal reservoir sites named by the present promoters.'

Those were the surveys from which the alleged suppressed report was deducted.

'Upon Mr. Manson's disability by illness, already referred to, the continuation of the Mokelumne investigation was turned over to Mr. C. E. Grunsky.'

Now there, I find out that Mr. Marsden Manson's report on the outside is referred to as passed for typing, and in the body of the report Mr. Manson comes to a definite conclusion.

'Who had himself also studied this river as a possible source for San Francisco eleven years ago and also had been familiar with many of

its features from boyhood, his early home having been at Stockton.'

Now there again—and I am subject to correction in this statement from Mr. Grunsky, himself, [194] but my information is that Mr. Grunsky—

Mr. BLAKE.—Don't state any hearsay at all. The only deductions you are allowed to draw are those from the report.

A. (Continuing.) Then I will not state that, because it is hearsay.

'Mr. Grunsky's full report, prepared in July, 1912, was filed with the Advisory Board of Army Engineers under date of August 1, 1912, in triplicate, comprising, with appendices, 174 typewritten pages and numerous tables and diagrams. The following is a very brief abstract of the report as filed. Copious extracts from it are presented in Appendix 18.

'In the report filed Mr. Grunsky notes that the possibility of supplying San Francisco from these sources was investigated by Col. G. H. Mendell (Municipal Reports 1876-77), and refers to his own investigation of 1901 and to that of these Mokelumne sources made for City Engineer Woodward in 1906.

'All of these previous investigations had so plainly brought out the disadvantages of the Mokelumne that Mr. Grunsky evidently was impressed with the unwisdom of spending any large sum of money at the present time for fur-

ther field work in detail, and so bases his statement upon the facts already on record.'

Now, here it is stated that Mr. Grunsky does not consider it wise to spend any more money on field work, although for the purposes of a report I consider that the plans and documents that accompany the Bartell report were very full and complete, and from them could be deducted the amount of water that Mr. Bartell calculated. There was really more than Mr. Bartell calculated. From his own tables it could be deducted quite correctly. Mr. Freeman says that Mr. Grunsky was impressed with the unwisdom of spending any more money. This is Mr. Freeman's statement in regard to Mr. Grunsky's report:

Q. He uses the word 'evidently,' there, does he not? A. Yes, that is the word that is used.

The COURT.—Q. In other words, Mr. Freeman makes the statement there that Mr. Grunsky evidently feeling that it was not worth while making any further investigation in the field, had based his conclusions in the report to the Army Board upon the data and reports previously had and existing in the office?

Mr. BLAKE.—Yes.

The COURT.—I suppose that would include the Mandell report and the six years previous report of Mr. Grunsky (Mr. Manson) and other data.

The WITNESS.—Well, not the Bartell report.

The COURT.—I did not say the Bartell report, I say the Mendell report. [195]

The WITNESS.—Because his conclusions do not agree with that report.

Moreover, there was not time for any extensive new field work after Mr. Grunsky was called in. As a matter of fact, they had been working something like two years on it. The plans I have date away back to 1910—from 1910 up to the time that the Bartell-Manson report was written in April, they had been working on surveys and plans. Mr. Grunsky (Mr. Freeman) states here there was not any time for any field work after Mr. Grunsky was called in to take up on the work which Mr. Manson had not completed at the time of his illness.

Mr. BLAKE.—You have made a mistake there in the name.

The COURT.—You stated ‘Mr. Grunsky states’—you mean Mr. Freeman states. A. Yes, Mr. Freeman states. I will point out that it is stated here, and I would consider that the public would infer from this statement that there was no report from Mr. Manson and that it was not completed, whereas, as a matter of fact, that report was passed by Mr. Manson for typing under his own initials, and was a completed report.

Mr. BLAKE.—Q. Now, pass from that on to other considerations which moved you to make the criticisms upon the city’s report on the Mokelumne?

A. He goes on to say:

‘I have not visited this region myself, but have carefully reviewed the data presented by Mr. Manson and Mr. Grunsky.’

The next page is 160-a of the Freeman report:

‘The following table, taken from Mr. Grunsky’s report, is of interest as giving an idea of the known storage possibilities of the Mokelumne watershed without any claim that this list of constructed and possible reservoirs is complete.’

In the list of reservoirs given he sums up the total amount of available storage as 65.23 billion gallons. That is about 65 1/4 billion gallons. Mr. Bartell gets over 80 billion gallons in his report and in his plans; Mr. Grunsky only puts it 65.23. I know from my deductions that there are something like 110 billion gallons of storage available. Q. In the entire Mokelumne supply? A. The entire Mokelumne catchment. Q. Pass on to the next.

The COURT.—We cannot spend too much time on this matter. The fact is that in a large part it has all been gone over before.

A. On page 160b, Mr. Grunsky found 39 billion; Mr. Manson’s map shows 26.8; and I find 41.5.

A. (Continuing.) On page 160c:

‘Mr. C. E. Grunsky concludes that it is in all probability not practicable to obtain more than [196] 60 mill. Gals. daily from the Mokelumne.’

Mr. Bartell obtained 305 million gallons per day and he deducted compensation water, most of which is purchaseable.

Mr. Bartell further finds, on his Railroad Flat diagram, . . . From his diagram it can be

clearly shown that his figure for that year for the upper catchments, the same catchments that I had in my report calculated on, that there would be 366 million gallons per day available.

Mr. BLAKE.—Q. Now, pass on to another point.

A. Mr. Grunsky at page 160d, calculates for 60,000,000 gallon per day supply, to be pumped to an elevation of 200 feet in San Francisco,—that is a pumping project,—\$30,179,903. I most distinctly state that 60,000,000 gallons of water per day can be brought into San Francisco, not by the pumping, as stated by Mr. Grunsky here, but by gravity for the sum of \$16,700,000—and a gravity supply, at that.

Q. I will ask you to confine your consideration to a comparison between the Grunsky report and the Bartell report and the facts shown by the Manson report.

A. Mr. Freeman states, on page 160d,

‘That the unit prices adopted to this modification have been modified to conform as nearly as practicable to those adopted by Mr. Freeman, but states that lack of time forbade going into details.’

That shows they did not give the proper amount of time to a consideration of the Mokelumne project and therefore should not have given it a black eye. Then with regard to the estimate, which I have previously mentioned, he states that

‘It is inconceivable that further exploration would cheapen the estimate for these particular structures.’

That shows that it is his absolute opinion that that estimate could not be cheapened and yet, Mr. Blake, I would take the contract to-morrow for \$16,700,000. Now here is where he hurts us, because undoubtedly—

Q. Just mention those considerations which show the discrepancy in the Freeman analyses of Mr. Grunsky's report in comparison with the Manson report.

A. Mr. Freeman states here as Mr. Grunsky's conclusion, page 160e, clause 2:

'The Mokelumne River should not be regarded as available to supply the full amount of water that will undoubtedly be required in the future, from remote sources, for the use in bay region. The limit may, for the present be placed at about 60 million gallons per day.'

That is in entire conflict with Mr. Marsden Manson's [197] statement in the Bartell report, in which he states that the Mokelumne River, if all rights be acquired, is available for that purpose. The next one is simply a difference in the capacity of reservoirs. There is another point: His estimate of the Mokelumne cost is very much too high. He used a most unfair comparison in his unit prices. The largest item in the dam is concrete.

The COURT.—You say his estimate for the Mokelumne—you mean for the expense of it, do you?

A. Yes, as compared with Hetch Hetchy, his comparisons were most unfair, indeed, and were injurious.

The WITNESS.—(Continuing.) Mr. Freeman estimates in detail the cost of Hetch Hetchy. He shows the cost of sand, and of everything else. He shows how he makes up his figures of \$4.75. Mr. Grunsky though, merely puts down the figure of \$9. It makes a difference of \$4,600.000.

Mr. BLAKE.—Some question has been raised on cross-examination as to the value that would be obtained by your clients in the resale of this property to the city. I would like to have you explain to the jury what element of value and what the amount of it was you had in mind as growing out of the doing of the actual construction work?

A. Can I refer to my report?

Q. Yes, you can get your report, because I will want to question you about it.

A. My idea in the project I outlined for the foreign capitalists was to construct the work in units. Originally, from the data I got from Mr. Sullivan, my figures and ideas and everything else were very much exaggerated. When I examined it myself, as I report here, I say that my ideas are much more conservative. The construction recommended in the first unit—because, of course, whatever other units were put in afterwards would depend on whether it was for power or irrigation—I say the construction recommended in the first unit was for an expenditure of \$8,143,171 for hydro-electric power and irrigation, of which \$1,500,000 was to be for the irrigation works, for irrigating, I think, about 50,000 acres. We proposed to buy the

land at from 15 to \$23 an acre, and to sell it for as much as we could get for it.

Mr. BLAKE.—Take the whole property en masse and explain to the jury, with the idea you hold towards its development at the time you made your report, what the increment in value would have been over and above the cost of improvements: that is, its capitalized value and its earning capacity?

The COURT.—Just state your theory.

A. The net valuation of the first development by construction, that is, with an expenditure of something over \$8,000,000 would give us a capitalized value of a little over \$22,000,000.

Q. Now, Mr. Aston, for the enlightenment of any of the jury who may perhaps, like myself, be somewhat uncertain about what we are to understand by that term ‘capitalized value,’ will you distinguish [198] between construction value and capitalized value. What do you mean by the term capitalizing its earning capacity?

A. Its earning capacity multiplied by 20—20 years at 5 per cent; that is, the gross amount that a dividend of 5 per cent would be obtained upon.

Q. That is what financiers call net capitalization?

A. Yes, and we create that value for our constructed works. Therefore the value to my clients by an expenditure of \$8,000,000 would have represented an increase in value of over \$22,000,000 for the first unit. The other units I need not go into. That gives the jury an idea of what the other units *might*. It would be probably 3 times as much for

the complete development, which would take probably 10 or 12 years to construct it as it would be required.

Mr. BLAKE.—Q. Now, Mr. Aston, that answers that question. At all the times you were engaged in formulating the details of this plan and building up the capitalized value in your mind, according to the way you have testified, did you have in mind that in the event the city of San Francisco should desire to use this Mokelumne source of water supply, the city would have the right to expropriate it, that is, to obtain it under eminent domain?

A. Yes, sir, under eminent domain.

The COURT.—Q. As I understand you, the attitude of mind actuating you throughout your activities in this matter with which you were investigating this property and making the report which you now hold in your hand was that the real value of this property to your clients, or anyone seeking it for like purpose, was its availability as a hydro-electric property, and for irrigation purposes.

A. And for water supply, too, sir, if we could sell the water supply, but we did not wish to sell the property; we would sell the water, but not the property.

Q. But the idea that you rejected and refused to entertain was that it would not be to the interest of any one developing this property that the property assets should be sold for the purposes of a water supply? A. For the principal purpose?

Q. Yes.

A. If we could have seen our way to make a profit for a water supply, to sell it per thousand gallons—

Q. (Intg.) That is not what I am saying. I say the idea you rejected all the while was the idea of having the tangible and physical properties devoted merely to a water supply for a city.

A. Yes, sir.

Q. Your idea was, as I understand it—and I am simply asking so that I may understand your attitude correctly, your idea was that there was far more on this property to be developed as an enterprise for hydro-electric purposes, for irrigation purposes, and for the supply of water by the gallon to the municipalities.

A. Yes, sir, that was my idea. If a poor man had this property, your Honor, and was burdened with assessments on it, and was not able to develop it, had not the necessary 8 or 10 million dollars to [199] develop it himself, then of course his policy would be to sell it to San Francisco. But if gentlemen like these—financiers—were to take it, then they could increase their capital by putting in large amounts of money into construction work, which would give them large net current valuations.

Q. And as I understand you, you make the property in that way much more valuable for investment purposes than simply the buying of it to sell to a city for a water supply?

A. Ever so much so. If the city of San Francisco wanted those rights, they could enter condemnation proceedings. The bondholders were tied up

for \$200,000. The Sullivan stock could have been purchased for \$15,000. The City of San Francisco in condemnation proceedings would probably not have had to pay more than 300 or 400 or \$500,000, unless they went into it (in a different way) a business man would go into it.

Q. I understand your attitude.

A. I may say that we always had the idea. The figure of a million and a half given to Mr. Wilsey was only a tentative figure, so that we would have something to talk on to Sir Robert Perks in New York in that month of March. Our whole idea was to get Sir Robert Perks to finance this and then we would make an attempt, as we did in May—in May we could have bought that property by buying off the bondholders and giving some stock—

The witness further testified that at the time he was making these representations against the good faith of the city engineers of San Francisco, first to Mr. Kent and afterwards to Mr. Ferris, he knew that Mr. Wilsey only had a three months' option on the Mokelumne properties. [200]

Thereupon the witness, Taggart Aston, testified that on July 16, 1913, he had sent a letter to the Honorable George E. Chamberlain, Chairman of the Public Lands Committee of the United States Senate. Said letter was introduced in evidence, and reads as follows:

[Letter, Dated July 16, 1913, from Taggart Aston to
George E. Chamberlain.]

“San Francisco, Cal. July 16th, 1913.

Hon. George E. Chamberlain, Chairman, Senate
Public Lands Committee, Washington, D. C.

My dear Sir:

— Further to my telegram to you of yesterday:

The order of the Secretary of the Interior, dated May 27th, 1910, granting the City of San Francisco, a continuance of hearing to June 1st, 1911, in the matter of showing why the Hetch Hetchy Valley and Reservoir site should not be eliminated from the permit to the City, of date May 11th, 1908, contains the following paragraphs:—

‘Said continuance and postponement is granted for the purpose of enabling said City and County of San Francisco to furnish necessary data and information to enable the Department of the Interior to determine whether or not Lake Eleanor Basin and watershed contributory, or which may be contributory thereto, together with all sources of water supply available to said city will be adequate for all present and reasonable prospective needs of said City of San Francisco and adjacent bay cities without the inclusion of Hetch Hetchy Valley as a part of said sources of supply; and whether it is necessary to include said Hetch Hetchy Valley as a source of municipal water supply for said City and County of San Francisco and bay cities.’

‘In granting said postponement and continuance it is understood said City and County of San Fran-

cisco will at once proceed, at its own expense and with due diligence to secure and furnish to said advisory board of Army Engineers all necessary data upon which to make the determination aforesaid.'

'Said Advisory Board of Army Engineers is hereby authorized to procure such independent data and information as it may deem necessary or proper to a full and complete determination of the matters committed to said board and the Secretary of the Interior for determination, and that said Board may call upon the Geological Survey or other bureaus of the Department of the Interior for such assistance as any such bureau may be able to render in the premises.'

'It is further understood that said City will, as soon as practicable, submit to said advisory board a full exhibition of its proposed plan of development and [201] utilization of water under said permit, together with estimates of cost thereof, and also a full statement of all outstanding water rights, both for irrigation, power and other uses on the Tolumne River and Lake Eleanor Basins and the proposed method of providing for the protection thereof.'

In compliance with the obligations imposed in this order, the City of San Francisco furnished the Army Board with the following documents relating to the proposed supply from the Mokelumne River.

Maps of Surveys of Reservoirs at Railroad Flat on the South Fork, and at Blue Creeks on the North Fork of the Mokelumne River.

The continuance of the hearing beyond the date first set, June 1st, 1911, was necessary to permit of the extension of these records through the dry season and for the gathering of much other necessary data, principally as to the availability of reservoirs and their capacities.

The subsequent postponements to March 1st, to June 10th, and, later, to November 25th, 1912, were necessitated by the inability of the City Officials to get their own and their consulting engineer's reports and statements in shape for presentation on an earlier date.

In accordance with an order of the Secretary of the Interior dated May 28th, 1912, there was filed reports on the 'various sources of supply'—the only one of these dealing with the Mokelumne Supply being that by C. E. Grunsky, Civil Engineer, filed with the Army Board on August 1st, 1912.

This report concluded that the limit, for the present, of the Mokelumne Source, of supply should be placed at sixty million gallons per day. The findings with regard to this and other matters being most inaccurate and preposterously misrepresentative and unfair to the Mokelumne Source.

Mr. Freeman and the Army Board largely based their findings on this false report, and were unaware that there was in existence another report, dated April, 1912, made by Mr. Manson, City Engineer of San Francisco, and his Assistant Mr. Bartel, which was accompanied by numerous and elaborate maps and diagrams, and which contained the following conclusions:—

‘The Critical period, August 1907, to December, 1909, inclusive—518 days, 222,408—518—432 million gallons daily draft available to San Francisco, provided all rights and all reservoirs be secured and utilized, this source, under this assumption is sufficient to meet the demands of the region around the Bay of San Francisco when reinforced from a full development of Lake Eleanor.’ This assumption having been arrived at only after the City Engineers had made surveys and examinations and had compiled elaborate Maps and data, and was made in spite of the fact that the City Officials were notoriously in favor of having Hetch Hetchy granted.

The above-mentioned report was carefully suppressed by the City Authorities, and was not submitted to the Army Board, as undoubtedly the above and other findings [202] would have led the Army Board to have reported against the granting of Hetch Hetchy National Park to the City.

The manner in which this report was found and how the City further endeavored to prevent public access to it are partly described in my letter to the Chairman of the Congressional Committee of Public Lands, dated July 8th, 1913. Since my exposure of this report the City Officials have been exhibiting a copy of it, from which the most essential statement contained in the original has been omitted.

Mr. Judell, the President of the Board of Public Works of San Francisco, refused to produce this report before me in his office and gave as an excuse for not doing so—‘that he did not wish to help the opponents of Hetch Hetchy’—after I had explained

to him that my reason for wishing to see it was to prove the charge made to me by the President of the Board of Health of San Francisco, Mr. Barendt, that in the copy of the suppressed report shown him on the 8th inst., the most essential part, i. e., the statement of the City Engineer—'that this source was sufficient to meet the demands about the Bay region' had been omitted.

I have no doubt but that there will be at least two sources proven more economically available, and giving as pure a mountain supply as Hetch Hetchy.

Owing to the false representations made by the San Francisco City Authorities to the Army Advisory Board, and to their suppression of favorable data which should have been submitted to this Board, the Press, the Nation and the Government, who left the supplying of data in good faith to the City, have been woefully deceived, and the properties of the proponents of other Sierra Sources have been seriously depreciated in value.

The deception is also a crime against the people of San Francisco as they have been forming their judgment upon false and inaccurate reports given out by the City, and have come to believe that Hetch Hetchy is the only source available.

I visited the City Hall on the 12th inst. in company with W. H. Hart, formerly Attorney General for the State of California, and Mr. C. Burleson, Civil Engineer, and asked to see the original Bartel-Manson report. We were shown a copy, and in confirmation of the charge previously made to me by the President of the Board of Health, Mr. Barendt,

we also found that the most essential conclusion of the report, i. e. the statement of the Mokelumne River 'is sufficient to meet the demands of the region around the Bay of San Francisco when reinforced from a full development of Lake Eleanor' had been omitted therefrom.

We asked the Assistant City Engineer for the original which we allege contained this statement, but he said apparently it had lately been sent to Mr. O'Shaughnessy, and they could not produce it. I can prove that it was in existence several weeks ago.

Regarding the City's representation to the Congressional Committee that there was a water shortage in San Francisco, and that it was necessary to obtain Hetch Hetchy at once, by rushing the Bill through the [203] present extra session in order to remedy this, I can only brand this statement as a deliberate misrepresentation, meant to deceive the public and the Congressional Committee, as the Spring Valley sworn statement for May, shows some 400 days supply in their storage reservoirs, and in addition they have over 400 days supply stored in their transbay underground gravels, or some 2 1-2 years supply in store, even if another drop of rain did not fall in the meantime. The failure to give sufficient supply in some districts being explained by the fact that the City's service pipes are insufficient.

Even if there was a shortage threatened, the quickest and most economical remedy would be the development of a further unit from Spring Valley

Sources, from which sources it is claimed that up to 210 million gallons per day can be ultimately be developed—41 1-2 million gallons per day being the present draw-off to San Francisco, In fact San Francisco must get a large increase of water supply from near-by available sources long before we could bring water from Sierra Sources, even if all legal obstructions were removed now.

It is a recognized axiom of Justice, that, upon fraud and deception having been proved, the '*Statu-quo*' should be assumed.

The United States Government will not disappoint the Nation in the present instance and a rigid inquiry is asked before further consideration of the Hetch Hetchy matter. And we hope that adequate time will be furnished us to complete data in proper shape.

I enclose you copies of correspondence had with the Hon. Scott Ferris, Chairman of Public Lands Committee, the most essential of which I note are not included in the first section of the '*Official Record*' of the hearing—a copy of which I have received today. I would respectfully ask you to include these and any other communications had with me in the Official Minutes of your Honorable Committee.

In this matter, kindly disassociate me personally from Mr. Eugene J. Sullivan. The objections of my clients against the City's deceptive actions, are merely those which they have a right, as American Citizens, to place before the Government in order to overcome the effects of gross misrepresentations

(Testimony of Taggart Aston.)

made regarding their properties, and to ask for Justice.

Very respectfully yours,

TAGGART ASTON,
Consulting Engineer.

T. A.—D.”

Thereupon, the following question was asked of the witness, Taggart Aston, by counsel for the plaintiff:

“Mr. BLAKE.—Q. Now I will ask you, Mr. Aston, to state briefly what you may have done in calling upon the city, as is stated here in this letter, in company with Mr. Hart and Mr. [204] Burleson, and state whether or not you were then shown a copy of the so-called Bartell-Manson report with the essential statement referred to in your letter here.”

Counsel for the defendants objected to said question on the ground that it was irrelevant, immaterial and incompetent. The Court overruled said objection and Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 32.

To said question the witness answered:

“On account of my assistant, Mr. McCarthy, having informed me that he had noticed in the copy shown to him by Mr. Bartell that this essential statement, which of course was the whole gist of this report which had affected me in communicating with Washington—on account of Mr. McCarthy having told me that he had not seen his essential statement

(Testimony of Taggart Aston.)

in the copy which Mr. Bartell showed to him, I informed the president of the board of health, Mr. Barendt, who called at my office—I had never known him before, I informed him that I believed that the city was now showing a copy which they purported to be this report, in which they had eliminated this very essential statement made by Mr. Manson, the city engineer, Mr. Barendt, on the 8th of July, went up to Mr. Judell, his fellow official, and asked Mr. Judell— [205]

Mr. BARRETT.—Q. In your presence?

A. He informed me that he had gone up there.

Mr. BARRETT.—I move to strike that out.

The COURT.—Don't state anything said when you were not present. All that one is permitted to state on a matter of that is that by reason of what was told you you did certain things.

A. By reason of what was told me by Mr. Barendt on his return I requested Mr. Barendt to go back with me to Mr. Judell in order that I could further investigate what Mr. Barendt had told me regarding it, which coincided with what Mr. Bartell had told me. Mr. Judell had shown Mr. Barendt this report. I went with Mr. Barendt to Mr. Judell's office. Mr. Barendt introduced me to Mr. Judell.

The COURT.—Q. Who was Mr. Judell?

A. Mr. Judell was the president of the board of works. He was at the head of all the engineering department. As the chief official, responsible for the city, I told Mr. Judell that I would like to see this report, as I wished, if I found this elimination

(Testimony of Taggart Aston.)

had been made, I wished to make the charge that the elimination had been made. I asked Mr. Judell would he kindly do as he had done with Mr. Barendt, show me that report as the chief of the public works department and chief of the engineers' department. Mr. Judell said, 'I will not show you that report, because we are not going to help the enemies of Hetch Hetchy.' Then I asked Mr. Judell would the engineering department show it to me. He said he could not speak for the engineering department. I then reminded Mr. Judell that it had been said before the—

Mr. BLAKE.—I don't think you should state those matters of hearsay.

A. On account of that, I asked Mr. Barendt to come up with me to the engineering department. Mr. Barendt said, 'No, this will get me in bad with the department if I pursue this matter any further.' "

[Testimony of Arthur H. Barendt, for Plaintiff.]

The plaintiff was here withdrawn and Arthur H. Barendt called as a witness on behalf of the plaintiff. Mr. Barendt testified that in the month of July, 1913, accompanied by the plaintiff, he had called upon Mr. Judell, President of the Board of Public Works of the City of San Francisco; that he had introduced [206] Mr. Aston to Mr. Judell and that Mr. Aston had asked Mr. Judell for the original Bartell-Manson report. The witness testified that he had told Mr. Judell that he had not seen the original, but had seen a carbon copy, but that

(Testimony of Arthur H. Barendt.)

he understood there were some interlineations on the original; that thereupon a very warm discussion took place between the plaintiff and Mr. Judell the exact substance of which was that Mr. Judell stated that he was not going to help any opponent of the Hetch Hetchy proposition.

[Testimony of Taggart Aston, (Recalled), in His Own Behalf.]

The plaintiff being recalled, was asked the following question with respect to the so-called Bartell-Manson report

“Mr. BLAKE.—Q. State whether or not you had occasion to make any public statements with reference to the matter of this report and of your interest in disclosing the fact of it on November 5, 1913, before the Civic Center meeting at the St. Francis.”

[207]

Counsel for the defendants objected to said question upon the ground that it was incompetent, immaterial and irrelevant, hearsay and *res inter alios acta*. The Court overruled said objection and counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 33.

To said question the witness answered:

“I had asked Mr. O’Shaughnessy to give me ten or fifteen minutes to look into the Mokelumne matter, and I told him that I thought that after he had heard and seen my data on it I was sure that he would personally remove the misrepresentations made regarding it in the previous report. This was

(Testimony of Taggart Aston.)

in a conversation over the 'phone. It was either the day before or two days before the Civic Center meeting. Mr. O'Shaughnessy replied very sharply that he was too busy, he would give me no time. As this was the first public meeting at which anyone had an opportunity to remove certain misconceptions that had been planted in the people's mind by the fact of the newspapers not publishing anything but one side of the matter, I therefore decided that it was the proper opportunity for me to tell the public my view of the question, especially as the 'Examiner' and others had referred to me as Mr. Sullivan's engineer and had connected me with him in the matter, and in a manner that I did not approve of. I therefore wrote out a speech which I delivered at that meeting. It was a meeting at which both sides were heard, and at which discussion was had on the various papers. I therefore wrote out a speech and delivered that speech. I afterwards had it printed and sent it to each of the Senators before this libel was published. I have an acknowledgment from senators in regard to having received the printed document which is a true copy of the written-out speech that I had made at the time."

Thereupon, the following questions were asked of the witness by counsel for the plaintiff and the following proceedings occurred: [208]

"Mr. BLAKE.—Q. Did you make this statement from a written statement that you had?

A. Yes, I read it, I read every word of it.

(Testimony of Taggart Aston.)

Q. The public statement is a transcript of that statement?

A. The public statement was taken from the printed manuscript you have there (referring to a manuscript in the possession of counsel for the plaintiff).

Q. Did you make a statement at that time concerning your personal interest? A. Yes, sir.

Q. What was the statement you made with reference to your personal interest?

Mr. BARRETT.—That is objected to as immaterial, irrelevant and incompetent, not sufficient foundation laid, and *res inter alios acta*.

The COURT.—The testimony tends to show that the representatives of the 'Examiner' were present and that the city officers were there, that is, I mean the city engineer and the attorney.

Mr. BARRETT.—There has been no proof, as I recollect it, that there was any representative of the 'Examiner' there. There is proof that on the next day the 'Examiner' had an item that there was a meeting held.

The COURT.—That would be a circumstance from which the jury might infer that the 'Examiner' was represented there.

Mr. BARRETT.—Is sufficient foundation laid? They are introducing hearsay and *res inter alios acta* testimony. Has there been a foundation laid? The foundation laid is that on the next day the 'Examiner' had an article about that meeting.

The COURT.—I think it is sufficient to admit the evidence."

(Testimony of Taggart Aston.)

Thereupon, counsel for the plaintiff offered in evidence an article on page 6 of the San Francisco "Examiner" of Thursday, November 6, 1913, under the heading, "Water Plan Views Aired by Outsiders."

Counsel for the defendants objected to the introduction of said article upon the ground that it was immaterial, irrelevant and incompetent, *res inter alios acta*, hearsay, and without sufficient foundation for its introduction, and not relating to any of the issues involved in the action. [209] Thereupon, before the ruling of the Court upon the objection, the following occurred:

"The COURT.—Does it purport to be an account of this meeting?"

Mr. BLAKE.—Yes, including an account of the speakers who were present, and who spoke on this subject. It is only for the purpose of giving basis for the inference which the Court has said is a proper one for the jury to draw. The question upon which it is material is the negative proposition that this witness' statements were wholly ignored and no comment made upon them."

Thereupon, the Court overruled the objection of counsel for the defendants to said article, and admitted the same in evidence. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 34.

Said article is as follows:

[Extracts from San Francisco "Examiner" of
Thursday, November 6, 1913.]

"WATER PLAN VIEWS AIRED BY
OUTSIDERS.

Miller of McCloud River and McDonald
of Eel River Say Hetch Hetchy
is All Wrong.

CITY ATTORNEY GIVES FACTS.

Long and Engineer O'Shaughnessy Show 'Visit-
ors' Where They Are Late in
Their Protests.

C. H. Miller, engineer for the McCloud River water project, and Henry M. McDonald of Stockton, who said he had none but a sociological, disinterested, patriotic interest in the Eel River water project, appeared on the same stage with M. M. O'Shaughnessy, the city engineer, and Percy V. Long, the city attorney, in the ballroom of the St. Francis Hotel last night at a meeting of the San Francisco Civic Center, to discuss the Hetch Hetchy water supply.

Miller of McCloud river, and McDonald from Stockton were most earnest in their efforts to show the large audience of San Franciscans that they and their fellow-citizens who voted overwhelmingly for the [210] Hetch Hetchy plan, and the many engineers who have recommended it, and the board of army engineers who set the seal of their disinterested indorsement upon it, and the geological survey, and the House of Congress, and Gifford Pinchot, and the Secretaries of Agriculture and of the

Interior, who, or which, have supported Hetch Hetchy, were all quite wrong, and that the McCloud or the Eel River was obviously the source for this city's water.

PITY THE POOR SECRETARY.

Nobody present last night, when all was over, could possibly have been in the position which City Engineer O'Shaughnessy stated that Secretary of State Bryan was in last year, at the banquet given by James D. Phelan in Washington, at which banquet, said O'Shaughnessy, Bryan asked the Californians whether 'Hetch Hetchy' was the name of an Indian tribe, or dance, or medicine, as it seemed to him he had been hearing quite a lot about it, and had got to wondering what it could mean.

The city engineer and the city attorney were equally as earnest in showing those present that Miller from the McCloud River and McDonald from Stockton might possibly be wrong in attacking Hetch Hetchy.

The city engineer, indeed, who opened the discussion, had the audience excited and expectant, perhaps even hopeful, for a few minutes when after warmly praising the Hetch Hetchy plan, he said vehemently 'And now for a word or two about our opponents!' and at the same time reached behind the speaker's table and picked up a shillela about the size of a small telegraph pole and waved it as if

Donnybrook Fair were about to be opened.

All that the city engineer wanted with the club, however, was to use it as a pointer in explaining his

diagrams. But Mr. McDonald from Stockton took occasion to remark when he got to his part of the discussion that he wanted no personal quarrel with anybody. He was disinterestedly interested, patriotically and sociologically, in the Eel river, and that was all.

MILLER CRACKS ALL HEADS.

Miller of the McCloud river project was frankly its chief engineer, and made no bones of cracking all the heads in sight that had anything to do with Hetch Hetchy, on the straight proposition that the McCloud river project, which was turned down by the Army Board, was the better project just the same, as the Army Board had *ran* short of lead pencils and had been obliged to quit its work of investigation when it had spent its appropriation, without really covering the ground. Without a supply of lead pencils it could not keep in business. As for Hetch Hetchy, Miller of the McCloud river wondered where they were going to get any water at all up there.

At the end of the attempts made by the proponents of McCloud river and Eel river to convert the rather languidly interested San Franciscans present, Percy Long good-humoredly explained his view that it was [211] rather futile at this stage of the proceedings, when Hetch Hetchy was practically assured, for McCloud river and Stockton, or the Eel river, to be so anxious to have San Francisco change its mind.

With which opinion the audience seemed to agree,

with the exception of a few who had come along to boost the Eel river, and one solitary and poetical-looking young lady who loudly applauded the reading of a long telegram from Richard Underwood Johnson, the magazine poet, denouncing the Hetch Hetchy project on the ground that it was robbing nature, and perhaps would stop the tourists from going to the valley.

A speaker later on said that the tourists who annually got to the valley numbered about two hundred.

An incident during the discussion claimed the attention of everybody present when, after Percy V. Long, City Attorney, had referred to the activities of Eugene J. Sullivan in Washington on behalf of the Blue Lakes proposition, as enough to make any San Franciscan ashamed of him, a pretty young girl in the center of the hall rose and said:

‘I am Miss Sullivan; are you referring to my father?’

Long said that he was certainly referring to Eugene J. Sullivan, if that was the young lady’s father’s name and, in spite of his deference for the fair sex, would have to repeat his former statement.”

The witness having testified that at the Civic Center Meeting at the St. Francis Hotel on November 5, 1913, he had made a statement to substantially the same effect as his testimony on the stand, but that there was something else stated by him at the meeting not testified to by him on the stand, the following questions were asked of the witness by coun-

sel for the plaintiff, and the following proceedings occurred:

Mr. BLAKE.—“Q. Did you make any statement at that time and place with reference to the fact that this supply from the Mokelumne had been discriminated against in various city reports?

Mr. BARRETT.—I object to that on the same grounds.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the [212] defendants hereby designate as their

Exception No. 35.

To said question the witness answered: “Yes, sir.”

“Mr. BLAKE.—Q. State in what points you made the statement that the supply had been discriminated against?

Mr. BARRETT.—The same objection, your Honor.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 36.

To said question the witness answered:

“I stated that the city’s reports had been biased in that they made unfair comparisons, they minimized our sources, supplies and estimates of our sources and exaggerated the estimates of other sources and thus made a false and unfair comparison with the Hetch Hetchy project. In particular, I mentioned one instance where in Mr. Freeman’s report, in a very essential item, the item of concrete in

the Hetch Hetchy dam as compared with the Mokelumne dams, he priced the Mokelumne dam—

The COURT.—Now, this matter is wholly immaterial.”

Thereupon, counsel for the plaintiff offered in evidence an article in the San Francisco “Examiner” of November 30, 1913, with reference to the proposed publication of the Washington edition of said “San Francisco Examiner.” Thereupon, the following occurred:

“Mr. BARRETT.—What is the particular purpose of that?

Mr. BLAKE.—For the purpose of characterizing the publication and its circulation.

Mr. BARRETT.—In so far as this might be an attempt to prove by this ex parte declaration of one of the defendants that Mr. Hearst got out the Washington edition, we object to it. I notice that in that article counsel is going to read some stuff with reference to the part that Mr. Hearst would have in that Washington issue. [213]

The plaintiff further testified that he first came into personal touch with the properties of the Sierra Blue Lakes Water and Power Company through a Mr. Hopley who told him that Mr. Sullivan had an important water project that could be used for hydro-electric purposes, and that thereupon the plaintiff took the matter up with Mr. Sullivan and later referred the matter to Mr. William J. Wilsey of Portland, Oregon, in a letter dated February 26, 1913, reading as follows:

[Letter, Dated February 26, 1913, from "T. A." to
W. J. Wilsey.]

"Mr. Wm. J. Wilsey,
Portland, Oregon.

Dear Mr. Wilsey:—

I have your letter of the 24th inst. I wired you last Monday as per enclosed confirmation [214] as am anxious you should spare some time to look into several large projects, which are, briefly, as follows:

(1) A large real estate buy in San Francisco. This is probably the finest real estate proposition in California to-day. I am now trying to make arrangements so that you may get it first hand.

(2) Hydro Electric (over 200,000 H. P.) and Irrigation project, plus some 60,000 acres in California.

(3) Ocean Terminal, Dock, Warehouse and factory project with some 800 acres of land on San Francisco side of Bay.

(4) Water rights, Irrigation, 160 miles of Railway, and over 100,000 acres of land in California. Will require some \$150,000 to tie up and handle within the next nine months. Arrangements have been made to bond all lands as soon as they are tied up.

I have not made any commission arrangements for myself on any of these matters, but would ask you, should you fancy any of the above when presented, to insist that such reasonable arrangements shall be made before taking them up, as it is not at all times

easy to decide upon the form of commission until matters have been fully discussed.

I have not received any definite instructions to go ahead with the Key Route plans, but am working away at them as time will be short to get them into anything like proper shape, and will be glad to have Mr. Sumner's advice when putting the finishing touch on them.

Yours very truly,

T. A."

Plaintiff further testified that on March 19th, 1913, he had obtained from Eugene J. Sullivan the document which was introduced in evidence, marked "Plaintiff's Exhibit 11," which reads as follows:

[Plaintiff's Exhibit No. 11—Letter, Dated March 10, 1915, from Eugene J. Sullivan to Taggart Aston.]

"San Francisco, Cal., March 10, 1913.

Mr. Taggart Aston, C. E.,
Foxcroft Bldg.,
City.

Dear Sir:

In the event of any business being done by our Company with Mr. Wilsey, we will pay you a commission of ten per cent on the amount received to be paid as received and in kind.

This is not an option of the Company's properties, but it protects you in case any business is done through Mr. Wilsey.

Sincerely yours,

EUGENE J. SULLIVAN,

President Sierra Blue Lakes Water & Power Co."

Plaintiff further testified that he notified Mr. Wilsey by wire that he had received the commission agreement and later received from Mr. Wilsey a letter dated March 14, 1913, relating to various propositions, among others the Blue Lakes proposition. The portion of the letter dealing with the latter proposition is as follows:

“Re Blue Lakes proposition, please say to Mr. Sullivan that I desire that you and he get together all data, and statement signed by himself as I outlined to you, and send all documents here as quickly as possible as I shall be leaving direct for New York upon the 20th or 21st. I would like to take these documents with me.”

Plaintiff stated that he made a preliminary statement on the Blue Lakes properties to Mr. Wilsey; that the statement was not properly a report because it was made on documents supplied to him rather than matters set forth as of his own knowledge. The statement was received in evidence marked “Plaintiff’s Exhibit No. 18” and is as follows:

**[Plaintiff’s Exhibit No. 18—Statement, Dated
March 19, 1913, from T. Aston to W. J. Wilsey.]**

“San Francisco, Cal., March 19th, 1913.

To Wm. J. Wilsey, Esq.,
Portland, Oregon.

Re Sierra Blue Lakes Water & Power Co.’s
Holdings.

Dear Mr. Wilsey:

As desired by you, I have gone into the questions involved in the above matter and beg to report to you in a preliminary manner as follows:

Watershed—671 square miles in El Dorado, Alpine, Amador and Calaveras Counties, State of California, at an elevation of from 2,500 to 8,000 feet above sea level.

Water Rights — 58,000 Miners' inches. Also United States Government license to flow water over Railroad Flat [216] reservoir. Third, a right of way for a canal from Railroad Flat reservoir to Rich Gulch Forebay. Fourth, 1,600 acres of land patented and applied for in sections 13, 19, 23 and 24, Township 6 North, Range 13 East, in Calaveras County. Fifth, 1,400 acres of land patented in section 25, Township 7 North, Range 14 East, and Section 30 and 31 in Township 7 North, Range 15 East, in Calaveras County, covering the middle fork of the Mokelumne River. Sixth, 40 acres of patented land at Rich Gulch, on which Forebay is located. Seventh, 10 acres for Rich Gulch power station. Eighth, ditch property known as Clark's Ditch, consisting of 55 miles of main ditch and laterals, with right to 600 inches of water located in 1856, and now a "going proposition" with one 28 acre reservoir near Railroad Flat, one 5 acre reservoir, and one small reservoir near Clark Homestead. Ninth, right of way over Government and private land from North fork of river via Bear Creek to middle fork of Mokelumne river for canal. Tenth, a United States Government license for North Fork reservoir, covering 1470 acres, with rights of way for canal. Eleventh, upper and lower Blue Lakes, located in Alpine County, with 4,000,000,000 gallons of water empounded. Twelfth, Case Valley reservoir and canals, a "going

proposition," main canal and laterals, 25 miles. Case Valley reservoir is now constructed, and the site at the head of Dry Creek reservoir also. Thirteenth, 340 acres patented land at Case Valley reservoir. Fourteenth, franchise for transmission and telephone lines through Calaveras County.

The Company can supply 397,000,000 gallons of water daily throughout the year, covering the waters that could be empounded behind these reservoir dams.

And other properties not included above and mentioned in Mr. Sullivan's letter to Mr. Wilsey and Mr. Burleson's printed report.

These properties and rights Mr. Sullivan has offered to you on behalf of his Company for \$1,500,000.

They were previously offered to the City of San Francisco, for a Municipal Water Supply for \$6,000,000. The authorities of that City, however, favored a supply from "Hetch-Hetchy," in the Yosemite National Forest, but it is doubtful if the Government will grant the permit for this. The Sierra Blue Lakes Cos'. Supply in conjunction with the American-Cosumnes project has been named by the U. S. Army Engineers' Board as the next in importance for supplying San Francisco and adjoining cities for next 100 years, the supply being even nearer to San Francisco than the "Hetch-Hetchy."

Sacramento, 60,000 population, Stockton, 35,000 population, Oakland and Berkeley, 250,000 population are cities now growing at the rate of from 50 to 90 per cent every ten years, and are also in the

market for a Municipal Water Supply. It is therefore reasonable to assume that at least 60,000,000 gallons per day (The Board of Army Engineers suggest 128,000,000 gals. per day) of the Mokelumne Supply will be diverted for this purpose.

I therefore suggest that the uses into which the [217] properties might be developed into a dividend paying proposition would work out as follows:

ESTIMATED COST.

Water-Supply for Municipal use 60,- 000,000 gallons per day—cost say...	\$10,000,000
Hydro-Electric Power say 120,000 H. P. (incl. headworks & Dams for Water- supply) cost at \$75 per H. P.....	9,000,000
Irrigation 150,000 acres at \$18 per acres.	2,700,000
Purchase of, say, 100,000 acres of Valley lands, at present prices averaging \$23 per acre	2,300,000
Water Rights and Properties.....	1,500,000
	<hr/>
Total Cost of Development,	\$25,500,000

The above would, of course, be developed in suitable units and does not fully represent the full limit to which the properties could be developed, but is a suggestion upon which to base a preliminary showing as to what future profits might amount to.

ESTIMATED PROFITS.

Water Supply—According to U. S. Census Bureau reports, the current value of a satisfactorily developed Municipal Water Supply in the Pacific Coast States amounts to \$240 for 750 gals. per day of annual capacity, or Current value of \$19,200,000

for 60,000,000 gals. per day, upon which a dividend of $4\frac{1}{2}$ to 5 per cent would be readily obtainable.

Water Power—The Board of Army Engineers conservatively estimate the Annual Net Profits per horse-power at \$20 per H. P. On this basis, the annual profits of the project, fully marketed, would amount to \$2,400,000 or a Net Current Value for a satisfactorily developed and Marketed Water Power, of \$48,000,000.

Irrigation—Water for irrigation would be sold at, say \$2.50 per acre per annum. It is usual to sell with land the right to use irrigation water at an annual rental for the latter. The purchaser also paying at the start, a lump sum representing his share of the original cost of Construction of ditches and laterals.

On 150,000 acres the annual rental would amount, therefore, to \$375,000 less, say, \$75,000 for management and upkeep—and would represent a net annual profit of \$300,000—and current value for the Irrigation System of \$6,000,000.

Profit on Land Purchase—The land proposed to be purchased at the present average price of \$23 per acre, will retail, [218] subdivided and under irrigation, at an average selling price of \$150 per acre. Deducting from this Overhead charges, commissions on sales, and original cost—say \$37 plus \$23 per acre, a profit of \$90.00 per acre should be realized. Representing a net current value of \$9,000,000.

The total *Estimated* net valuation, therefor, that might be expected from a carefully executed project would be as follows:

Water Supply	\$19,200,000
Water Power	48,000,000
Irrigation	6,000,000
Sales of land	9,000,000

Current Net Value of Total

Development\$82,200,000

In other words, the investment of \$25,500,000 should yield 5% on \$82,200,000 and should represent, after careful management within 6 to 8 years, a profit, if sold out, of some \$40,000,000 to \$45,000,000.

The Advisory Board of Army Engineers; Colonel John Biddel, Corps of Engineers, U. S. Army; Lt. Colonel Harry Taylor, Corps of Engineers, U. S. Army; and Colonel Spencer Cosby, U. S. Army (Major, Corps of Engineers) Value present Water rights of Blue Lakes Sierra Water & Power Co., for 128,000,000 M. G. D. Municipal Water Supply, at \$3,000,000 (See p. 132 of Report of Advisory Board of Army Engineers on San Francisco Water Supply to the Secretary of the Interior, dated February 19th, 1913). The balance of the Company's filings and properties were not included, and this valuation represents the *Minimum* sum that an Arbitration Court would award the Company for its proportion of their property in its present undeveloped state.

Further the Advisory Board above mentioned (see p. 133 of their report) estimate the net value of the water power, when developed, at \$20 per Horse Power, per year, and they capitalize it at 4½ per cent, equalling \$450 net current value per Horse Power.

I am enclosing the following copies of Reports:

Exhibit "A"—Minutes of conference between Advisory Board of U. S. Army Engineers and Sierra Blue Lakes Water & Power Company at Custom House, San Francisco, Cal., July 5th, 1911.

Exhibit "B"—Extract from San Francisco Municipal Records, 1877-8.

Exhibit "C"—Report of Russell Dunn, C. E. 1908.

Exhibit "D"—Report of D. H. Fry, C. E. 1904.

Exhibit "E"—Report of C. M. Burleson, C. E. typed.

Exhibit "F"—Report of G. M. Burleson, C. E. printed.

Exhibit "G"—Map of California, showing location of property. [219]

Exhibit "H"—Map showing Irrigation District.

Mr. Sullivan, President of the Company, informs me that two firms, one American and one Norwegian, are at present desirous of entering into a long contract for all of the Hydro-Electric Power that can be developed on the Company's property, for the purpose of manufacturing "fertilizer" on a large scale.

An income, probably sufficient to pay upkeep, taxes and interest, can be obtained from the present flow of the Mokelumne River for irrigation purposes previous to completion of the dams and the more expensive works.

I understand that Mr. Burleson has had charge of the Gaugings, Surveys and Engineering end of this project for many years. I would therefore feel inclined to place more reliance upon his report than

others. However, I consider the Estimates of cost in various reports to be somewhat low. And his estimates of probable yield of water are high as compared with those of the San Francisco City Engineers, whose conclusions and reports, however, seem to be based upon instructions or prejudice in favor of the "Hetch-Hetchy" project.

Yours truly,

T. ASTON."

The plaintiff further testified that shortly before the 15th of May he was informed by Mr. Harte Keatinge that Mr. Sullivan, in return for moneys advanced by Mr. Keatinge and his father, had given Mr. Keatinge and his father the control of the Sierra Blue Lakes property and was going to give them a power of attorney to deal with the properties; that at the instance of Mr. Harte Keatinge the plaintiff arranged a meeting in Portland with Mr. Wilsey and that the plaintiff, Mr. Harte Keatinge and Mr. Richard Keatinge, went to Portland.

There was here offered and received in evidence, a letter from Mr. Wilsey to the plaintiff, dated April 23, 1913, [220] reading as follows:

**[Letter, Dated April 23, 1913, from W. J. Wilsey to
Mr. Aston.]**

"Dear Mr. Aston:

I am enclosing copy of letter just received from Mr. Wright of London. I sent this Paris gentleman copy of your report on Blue Lakes. He writes to Mr. Wright for further information. I cabled Mr. Wright today to hand him the documents you sent me. Please send me some more (3) copies of En-

gineers' reports, that circular containing report of all properties. Send me some newspaper clippings about Government turning down Hetch-Hetchy deal.

With best wishes, I am,

Yours truly,

WILLIAM J. WILSEY."

The witness further stated that the enclosure referred to in such letter was the letter from H. L. Turck to Messrs. C. Leary & Co., dated April 9, 1913, and reading as follows:

**[Letter, Dated April 9, 1913, from H. L. Turck to
C. Leary & Co.]**

"9 April, 1913.

Messrs. C. Leary & Co.,
4 Lombard Court,
Gracechurch Street,
London, E. C.

Gentlemen:

I am duly in receipt of your letter of the 7th inst. Mr. Wilsey spoke to me about the matter of the 'Sierra Blue Lakes Water Co.' and sent me data regarding the same which I have looked over briefly as the translation from English into French had not then been made.

This deal seems to me to be of very large proportion, but its success, in my estimation, rests in the question of the furnishing of water to the City of San Francisco.

(A) Are there any assurances, or, at least, probabilities that a deal could be made with the city of San Francisco?

(B) Need there be no more fear of the competition of the Hetch Hetchy? A reply to this would be of service to me in order to form a preliminary opinion on this matter.

(C) Which is the electric railway that might be secured in this matter; is it constructed already or has it to be constructed; and all information as to its course, probable traffic, etc.

(D) What plan have you as to the financing of the Sierra Blue Lakes Water Co. deal in order to put it on a working basis?

As soon as I have the above information I could consult my friends here in Paris and let you know whether I have a chance to place the business.

Yours very truly,

H. L. TURCK." [221]

The plaintiff further testified that in reply to this letter he had written Mr. Wilsey as follows:

[Letter, Dated April 25, 1913, from T. Aston to W. J. Wilsey.]

“San Francisco, Cal., April 25, 1913.

Mr. Wm. J. Wilsey,
Portland, Oregon,

Dear Mr. Wilsey:

Your letter and enclosure of the 23rd inst., received late this afternoon.

As you may wish to cable replies to the Parisian gentleman's inquiries, I answer them (after collaboration with Mr. Sullivan) as follows:

A—Strong probability is that San Francisco and Bay cities will desire to adopt Blue Lakes Supply.

But profits are larger and more immediate in developing supply for nearer towns than San Francisco and developing power and irrigation. Parties are ready to take all water power and irrigation water than can be generated.

B—Government has consistently refused grant of Hetch Hetchy. New Secretary of Interior has concurred in ruling of former Secretary that the matter of granting Hetch Hetchy be decided by Congress. It is conceded that Hetch Hetchy will be denied.

C—Numerous Electric and other railways intersect district. Line referred to is 18 miles, is unimportant side issue in this project.

D—See Aston's report.

Kindly note that San Francisco or Hetch-Hetchy are not considered important factors with relation to developing Blue Lakes. My report to you leaves them out of the question—and estimated profits are based therein on water supply to Stockton and Sacramento and Hydro-Electric, Irrigation and Valley lands.

I am particularly anxious your associates should secure these rights and properties, and am sure you are doing all that is necessary to have them secure the option, when they will have six months to make detailed examinations and reports.

Yours very truly,

T. ASTON."

The witness testified that the specific paragraphs A, B, C and E in his letter to Mr. Wilsey, were the answers to the questions of corresponding letters in the letter of Mr. Turck to Messrs. C. Leary & Co.

The witness here testified that he recognized that [222] these gentlemen had in mind the furnishing of water to San Francisco, but that he had told them that he did not think it practicable and that he had made up his report with another object in view. He further testified that he at this end knew a great deal more about the matter than they did, and that his whole report was based upon his own policy and the policy he recommended.

There were further offered and received in evidence the following letters identified by the plaintiff as having been sent and received by the parties to whom and by whom they appear respectively to have been received and sent, it having been testified to by the plaintiff that all of said letters other than those addressed to the plaintiff, had been received by him as enclosures in letters to the plaintiff from William J. Wilsey:

Letter from H. L. Turck to Messrs. Leary & Co., dated April 28, 1913, reading as follows:

**[Letter, Dated April 28, 1913, from H. L. Turck to
Leary & Co.]**

“Paris, France, April 28th, 1913.

Messrs. Leary & Co.,

4 Lombard Court,

Gracechurch St.,

London, England.

Gentlemen:—

I have your letter of the 25th inst. Re Blue Lakes. I would like very much to receive all documents that you have regarding this business. To start with, I think it would be well to have

First. Detailed program of all works to be done with cost of construction and probable time for construction.

Second. The estimate of profits of the exploitation.

Third. Financial project.

Really to make it possible for me to interest the Baron Reille and his associates in this business it is necessary that I can put before him all the information that I have asked you for above. That is to say, a well prepared plan of the project with regards to the technical and [223] financial side. In carefully preparing a resume of the Blue Lakes business with regards to these two points of view, so as to make my friends clearly understand the interesting part of this business, is the same time preparing for its success.

Awaiting your reply, gentlemen, and with my most cordial regards, I am.

H. L. TURCK.”

Letter dated April 29, 1913, from H. L. Turck to W. J. Wilsey, enclosing a copy of the aforesaid letters from Turck to Leary & Co., dated April 28th, 1913, reading in part as follows:

[Letter, Dated April 29, 1913, from H. L. Turck to
W. J. Wilsey (Part of).]

(Translation.)

“Paris, France, April 29th, 1913.

Mr. W. J. Wilsey,
Selling Bldg.,
Portland, Oregon.

My dear Sir:—

Re Blue Lakes. I received your kind letter of the

16th inst. and have just written to Messrs. Leary & Co. of London, according to enclosed copy. In fact I think that before presenting this important business to the Baron Reille and his associates it would be well to first make a general plan which outlines the whole question as regards the technical and financial part so as to show well all the advantages of the business.”

Mr. BARRETT (after reading the foregoing, continuing to cross-examine the plaintiff).—Did that leave any doubt in your mind but that to sell this property along the lines that you and Mr. Wilsey had it you had to get Hetch Hetchy out of the way?

A. No, sir. We told Mr. Turck that Hetch Hetchy had nothing to do with our plans. In reply to those letters we disabused his mind altogether of Hetch Hetchy. I will show you very clearly by my letters which followed that, and by my report, that we endeavored to disabuse them of the idea they had got about it no doubt, San Francisco being a large city, San Francisco would loom up large in his mind. He was not acquainted with the details regarding hydro-electric power and irrigation and other matters here. There is no question, Mr. Barrett, but that the project looking to the greatest profits out of these property rights was the development of hydro-electric power, irrigation and water supply to small cities, where we could sell the water; but as I said before I had no idea and I would have scouted any idea of buying these properties for say a million [224] and a half and selling them for any other figure. Of course, Mr. Barrett we all like to

(Testimony of Taggart Aston.)

make money. Supposing such a deal had come up, I just like anybody else would have gone into it, but that is not the question. Such a deal was not to my mind in any way practicable, but the other was; it is the other deal that was the sole subject.

Mr. BARRETT.—Q. Then when you made your campaign at Washington against Hetch Hetchy and against the city getting it, did you have in mind at all that if you could accomplish that you could put your property in the position in which Mr. Turck of Paris inquired about and said was at the basis of the whole thing? When you were sending your telegrams to Washington you were not thinking at all of getting it in a situation that Mr. Turck was speaking of. . . .

A. I will answer it in this way: How long would it have taken for the Hetch Hetchy bill to have been thrown out? That would have been sometime in December. Mr. Wilsey's option expired on the 27th of August. As Mr. Wilsey explained, in reply to Mr. Turck's letter, he said that if there was any chance of selling to San Francisco that we—Mr. Wilsey, and Sir Robert Perks and others—would have no chance of getting the property. In that way he endeavored to disabuse Mr. Turck's mind as to the necessity for having Hetch Hetchy.

Mr. BARRETT.—Now, after discussing the proposition with you, that you were financially interested in a scheme that you knew had to do with getting Hetch Hetchy out of the way, I want to inquire, just very briefly, about the lines of activity you took in Washington. Without going to the

(Testimony of Taggart Aston.)

record may I say that your activity at Washington by telegram and by letter was too full; that in the one direction you were complaining of the suppressed report and the unfair treatment of your plan; that in the other you were making a very considerable and definite campaign against Hetch Hetchy. Now, does that summarize and properly characterize your general activity at Washington?

A. I am going to answer that exactly in the way I think you want it answered if you will allow me to epitomize my reply. I had two objects in my activity; one was a private one and the other was a public one. The private one I have in a way already explained but not as fully as I would have cared to. As to the public one, there were many reasons for the public one, that was the duty which an engineer owes to his profession when he discovers that misrepresentations with regard to such a very important matter as that have taken place. I was aware, Mr. Barrett—I will tell you what was in my mind—I was aware that the Spring Valley Water Company was about to be purchased by the city. I was aware that Mr. Franklin K. Lane and others—it was stated, however, that it was going to be represented to the committee that here was a water shortage in San Francisco [225] and that for that reason this bill should be rushed through a session of Congress and through this committee. Now, that statement that there was a water shortage in San Francisco which called for an emergency measure in Congress, I considered one of the most diabolical things I have ever heard of because, Mr.

(Testimony of Taggart Aston.)

Barrett, I had had in my hands at the time I wrote to Washington the monthly sworn statement made to the Board of Supervisors of San Francisco which stated that there was at least something like two years supply on hand in the reservoirs for San Francisco and that—

The COURT.—Q. You mean the Spring Valley reservoirs?

A. The Spring Valley reservoirs had two years supply on hand when the city officials of San Francisco put the words into Mr. Franklin K. Lane's mouth. They made a most horrible use of that gentleman when they made him their mouth-piece in saying that babies were dying, the people could not wash their door-steps, and we must have this emergency measure. The letters that came back here from Mr. Scott Ferris in reply to the protests were all couched in the same language, that Mr. Gifford Pinchot and all those very eminent gentlemen had said that the people of San Francisco were dying for water and that only Hetch Hetchy would save them. The most infernal lie that was ever couched before a parliamentary body. What was the true condition of affairs about this water shortage? It was because in one or two outlying districts there was a shortage of service pipes. I heard Mr. Rainey try to put the same argument before an audience with regard to water shortage and hence the need of Hetch Hetchy. Mr. Rainey was illustrating his argument by stating that in one outlying district the people had to be supplied by a

(Testimony of Taggart Aston.)

water-cart. Well, that argument was well answered when somebody in the audience asked him where they got the water to put in the water-cart. That was very nearly answering his argument. That was the situation in regard to Hetch Hetchy in Congress. I endeavored to expose that. I telegraphed to the chairman. I have in my possession a letter from the Vice-president of the Spring Valley water Company giving me all these details. I heard Mr. Dockweiler, the Consulting Engineer for San Francisco, say that the Spring Valley Water Company could be purchased by the city and it would give a water supply for the city for the next 100 years. I knew there was no need for the city to go to Hetch Hetchy, or to the Mokelumne or any other Sierra Source to the City of San Francisco. I can show you in my correspondence in which I say I was aware of that fact and communicated that fact to the Committee. And I consider, Mr. Barrett, that against all these tremendous powers I was acting with the highest motives when as an engineer, and when I felt indignant at this proceeding, I brought this to the attention of Congress. It was no pleasure for me to do so. I consider I was dragged into this matter. I did not want to get into it. In November—before this libel was published, I telephoned to Mr. [226] O'Shaughnessy and I said 'Mr. O'Shaughnessy, all I want in this matter is to have misrepresentations removed from the Mokelumne project, I think they have been unfairly treated, and I would ask you to give me 10 or 15

(Testimony of Taggart Aston.)

minutes of your valuable time in order that I may show you my data when I feel sure you will personally remove these misrepresentations.' I said, 'I don't wish to oppose Hetch Hetchy, it is not my wish in any way to do so.' Mr. O'Shaughnessy cut me short; he said: 'have no time to talk to you.' Then I prepared my speech for the following night, for November 5, before the Civic Center, and that has been already mentioned here.

The COURT.—Q. That was your public interest; you said you had a private interest?

A. Yes, that was for my clients, to remove the misrepresentations. If I had thought, Mr. Barrett, there was any chance to sell to the City of San Francisco I should have opposed it for that purpose, most undoubtedly. I am not a hypocrite, I am not hypocritical. If I thought my clients' interests lay in that end, I would have done so, I confess I would have done so for that purpose. But it did not. My mind is perfectly clear on that. I think when I read you my report even you will agree to that.''

A letter from W. J. Wilsey to the plaintiff, dated May 10, 1913, the pertinent portion of which is as follows:

[Letter Dated May 10, 1913, from W. J. Wilsey to Plaintiff.]

"I have your kind favor of May 10th and note contents regarding Blue Lakes. I am sending copy of that portion of your letter to those who are now interested in the deal. Am also sending you a copy of a letter just received from Paris. I wish that

you, as engineer, would take up the questions and fully explain, and send me three copies, as soon as possible.”

The latter letter enclosed aforesaid letter from Turck to Leary & Co., dated April 28, 1913.

Letter from the plaintiff to William J. Wilsey, dated May 15, 1913, reading as follows: [227]

[Letter, Dated May 15, 1913, from T. Aston to W. J. Wilsey.]

“San Francisco, May 15th, 1915.

Mr. Wm. J. Wilsey,
Portland, Oregon.

Dear Mr. Wilsey:—

With regard to Mr. Turck’s queries—in order to prepare a report to fully answer his purposes, and one that I could stand by, would occupy considerable time, both in field and office, and would also involve heavy out of pocket expense. It would cost at least \$2,500, to prepare this matter in the shape that I would wish to present it. The preliminary report which I have already prepared, together with the other reports submitted should serve to show what a complete project would cost and the profits that might be expected therefrom.

To reply to Mr. Turck’s queries—My report to you, dated March 19th, gives the cost and profits as the project presented itself to me, without having made a detailed examination.

The expenditure of some \$25,000,000 would be spread over a term of some eight to ten years. The first unit would be a Hydro-Electric Construction of 40,000 H. P. which would absorb \$3,500,000, and a

further expenditure for purchasing and irrigating some 50,000 acres of land at a joint cost of about \$2,750,000. Also the Cities of San Francisco, Oakland, Berkeley, Alameda, Richmond, Sacramento and Stockton, with their tributary population of some 1,500,000 people, are all running short of water, and are in the market for municipal supplies. The 'Blue Lakes' supply being the nearest Mountain Water Supply available for the cities named. However, as you are aware, the negotiations for these will be long drawn out affairs, and as there is plenty of immediate market for Hydro-Electric and Irrigation water, the present holders of Blue Lakes and Mokelumne River properties would not wait to dispose of their properties until such arrangements had been made. In fact, if they could be consummated at the present time, they would sell direct to the Cities and would ask at least \$6,000,000 for their properties and rights as they now stand. The first unit of 40,000 H. P. would take some ten months to construct, and should have Gross Earnings of \$1,000,000 per annum. The remaining units would be undertaken when and as demand would be made for water and power.

The financial project is one for much discussion and consideration, and in order to help matters along, I have arranged with Mr. Keatinge, of Richard Keatinge & Sons, Contractors, to accompany me to Portland to thrash these matters out and endeavor to arrive at a satisfactory and definite plan and conclusion.

The Keatinge's have been helping Mr. Sullivan

out financially, so as to pay all assessments and keep the properties together. Mr. Keatinge, Jr., is a gentleman of wealth and ability, and as he feels satisfied as to the standing of yourself and associates, [228] is willing to give his time and money to hold the project for us, and if necessary accompany you to Europe fully empowered to act as may be found mutually desirable upon your arrival there.

It may be possible to arrange matters so that no option money need be paid until matters have been well forwarded and your associates fully satisfied—but a thorough and reliable report and examination should at once be made. I am prepared to undertake this as soon as arrangements can be made—and would be glad if Mr. Sumner could afterwards go over and supplement or frank it.

You will have my telegram of even date, in which I state that Mr. Keatinge and myself will go to Portland on Saturday, if suitable to you.

It will be necessary to get San Francisco and Hetch Hetchy out of your associates' heads—the success of the project is not dependent on them.

Yours very truly,

T. ASTON."

Letter dated May 8, 1913, W. J. Wilsey to J. G. Wright, the pertinent portion of which is as follows:

[Letter, Dated May 8, 1913, from W. J. Wilsey to
J. G. Wright.]

“Mr. J. G. Wright,
4 Lombard Court,
Gracechurch St.,
London, England.

Dear Mr. Wright:—

I have your kind favor of April 26th and note contents. Both of the questions you ask have been answered in letters you have no doubt received by this time. The electric road I referred to, to be presented in conjunction with the Blue Lakes project, is the California deal, not the Oregon.

No, there is no negotiations at present time with the City of San Francisco regarding water from Blue Lakes. If San Francisco had decided to take this water, it would be quite impossible for any of us to get the deal as it would be worth a great many times more than what they are asking for it. I think it is a first class proposition to take up and to pay the company the \$10,000 asked for the option and then go on and finance it as it is not necessary to have San Francisco agree to accept this water as it will only be a few years until they have to come to it, as you will note by the enclosed clipping that they will not have water enough to supply the people in 1915.” [229]

Plaintiff here testified that he did all he could to disabuse their minds of this matter—to put Hetch Hetchy out of their minds; he further said that Mr. Wilsey did not know as clearly as he did that San

Francisco had a supply that would serve its requirements for seventy or eighty years. The following then occurred:

“Mr. BARRETT.—Q. Just a line more in this same letter:

‘I have just received a letter from Sir Robert Perks in which he says that he would like to know if the cities want to get this water before he goes any further with the deal. It seems to me he would like to have this placed before him on a golden platter, guaranteeing one hundred dollars for every dollar before he can see his way clear. In the event that San Francisco asks for this water neither Sir Robert or any one else could obtain it.’

A. Quite so. That is my point, Mr. Barrett.”

Letter, H. L. Turck to W. J. Wilsey, dated May 23, 1913, and reading as follows: [230]

[Letter, Dated May 23, 1913, from H. L. Turck to W. J. Wilsey.]

“Dear Sir:—

I have received your letter of the 9th inst. I have made an appointment with Baron Reille for next week to talk over the business of the Blue Lakes and the Electric Railway.

I have noticed from the newspaper clipping that the people are afraid of a shortness of water for San Francisco during the Exposition of 1915.

To finance this important business it will in fact be necessary that we have a long term option, at least six months as you suggest. I have not received a copy of the letter from Mr. Sullivan, president of the company.

Yesterday morning I saw again Mr. E. Berg to whom I have spoken again about the Blue Lakes business. He has promised to send me tomorrow or Monday at the latest, privately, this report. According to what Mr. Berg told me, there would be several companies who intend to get water from the Blue Lakes or from the rivers which get their water from the Blue Lake, and if that is so it would naturally be necessary to have an option on the whole business to prevent competition which might cause trouble in the realization of this enterprise.

Mr. Berg told me also that a Mr. Freeman, Consulting Engineer in Providence, U. S., had also made a very extensive study regarding Blue Lakes and other water sources in California, and possibly it would be interesting for our business to get the documents regarding this big work that this engineer has made. In any case I thought it wise to post you on this.

I heard through Messrs. Leary & Co. that Sir Robert Perks had left for England on the 'Mauretania.'

As soon as I shall receive any interesting news I shall at once advise you.

Very truly yours,

H. L. TURCK."

Letter, George L. Wright to W. J. Wilsey, dated May 24th, 1913, and reading as follows:

[Letter, Dated May 24, 1913, from G. L. Wright to
Mr. Wilsey.]

“London, E. C., 24th May, 1913.

Dear Mr. Wilsey,

We have a letter to-day from Mr. Turck, saying he has seen Mr. E. Berg, who has promised to send him his Report privately, to-day or Monday. Mr. Turck says he has spoken again to Mr. Berg about the Blue Lakes business, and he says a very complete survey of it has been made by Mr. Freeman Consulting Engineer, of Providence, U. S. A. He thinks it might be of interest for you to put yourself in communication with this gentleman, to whom moreover Mr. Turck himself is writing.

Yours sincerely,

GEORGE L. WRIGHT.” [231]

Letter from the plaintiff to William J. Wilsey, dated July 14, 1913, reading as follows:

[Letter, Dated June 14, 1913, from Plaintiff to W.
J. Wilsey.]

“San Francisco, Cal., 6-14-13.

Mr. Wm. J. Wilsey,
Portland, Oregon.

Dear Mr. Wilsey:—

I am sorry to note from your letter of the 13th inst., that you are not coming to San Francisco at this time, but trust you may soon be able to get away.

. . .

I am very busy with the Blue Lakes Report, it will be some ten days before it can be completed. As you are aware, the City are pushing the Hetch

Hetchy project before the Congressional Committee, by a fortunate circumstance I have been able to lay my hands on elaborate unpublished data and plans prepared by the City for Blue Lakes Project, which practically proves our case, and shows that they wrongfully held back the information. I shall be preparing a special Water Supply Report, but Mr. Keatinge is willing to pay for it. We would very much wish to consult with you before sending reports away, as there is a good chance to supply Sacramento with 40,000,000 gal. per day; also Stockton, Oakland, and Berkeley. And there is a question of getting an option to purchase a reservoir site on the N. Fork of Mokelumne River (now in other hands) which would cinch matters for us.

Yours very truly,
T."

Letter from R. W. Perks to William J. Wilsey, dated August 6th, 1913, reading as follows:

**[Letter, Dated August 6, 1913, from R. W. Perks to
W. J. Wilsey.]**

“Brunswick House,
2 Central Buildings, Westminster, S. W.

6th August, 1913.

My dear Mr. Wilsey,

I duly received your letter of the 23d July yesterday and I have also got a very complete report made by Mr. Aston on the Blue Lakes Water Power Company and the irrigation scheme.

I note that your option to deal with this business expires on the 27th August.

I have written to Mr. Turck asking him whether

Baron Reille will be disposed to go into this business.

I feel however quite convinced that neither of these gentlemen can deal with the business, if at all, before the time of your option will expire.

Before cabling, however, to you on this subject [232] I prefer to wait until I hear from Mr. Turck which I shall hope to do to-morrow.

So far as I am personally concerned I am leaving town at the end of this week for a month's vacation which I badly need as I have been working at full stretch and it will be quite impossible for me to go into business with the necessary detail; but even if I did I have not got the local knowledge, neither am I sufficiently familiar with prices in California to give any intelligent personal opinion about this business.

As I have so often pointed out to you and to other friends of mine who come to me with various projects, my business is simply to construct, and sometimes assist in the finance, but I cannot undertake the business of promoting new enterprises.

Another difficulty and I think quite of an insuperable character at present is the great reluctance of any companies or banking and financial houses in London to undertake any business in connection with the new works whether railway, electric harbour or otherwise.

No matter how profitable or attractive such projects might be in normal times it is quite impossible at present to handle such business at all in London or indeed in Paris.

I greatly doubt whether we shall see the end of

this condition until next spring when the savings of our respective countries may have mounted up and people will be more inclined to look at new enterprises.

As you know also, several issues which have been made in London of American and Canadian enterprises have not turned out well and the investment market is therefore extremely cautious.

You will gather from what I say that I much regret that I do not know of any quarter in which I could assist you successfully to handle this special business.

Perhaps you will instruct me by cable what you wish me to do with Mr. Aston's report in the event of Mr. Turck coming to the conclusion that he and his friends cannot deal with the business.

Yours truly,

R. W. PERKS."

The witness further testified that at the conference in May, 1913, in Portland, between himself, Mr. Wilsey and the Keatinges, he was employed to make a report on the properties of the Sierra Blue Lakes Water & Power Company, and further that he felt that the report, to deal with the matters referred to in the foregoing letters, would cost about \$2500, but that he had told Mr. [233] Wilsey that he would not charge such a sum if Mr. Wilsey would consider appointing him as engineer afterwards, or do his best to have him appointed, and also give him some small interest in his (Wilsey's) own profits out of it, that in such case plaintiff would do the work at cost plus a small per diem to cover necessary expenses.

Plaintiff further testified that the expense of the report was to be borne by Mr. Wilsey and the Keatinges in the proportion of one-half by each. The witness further testified that as agreed upon between him and the Keatinges in Portland, the object of the report was to show the availability of the properties for a hydro-electric irrigation project, and stated that in Portland they had talked of supplying Sacramento or Stockton, or Sacramento and Stockton if there was any water left over. The witness testified that he had made the report which was completed in July, 1913, and there was thereupon offered in evidence a copy of said report from which the following portions dealing with municipal water supply were read to the jury:

**[Report on Properties of Sierra Blue Lakes Water
& Power Co.]**

“MUNICIPAL WATER SUPPLY.

The upper Catchment of the Mokelumne River was chosen in 1878 by the San Francisco Municipality as the Source of Water Supply for that City, but it was found that there was a State law at that time which prevented this being done.

San Francisco has of late years been seeking a Sierra Source of Supply. An Advisory Army Board was appointed to report to the Secretary of the Interior as to whether there were any other Sierra Sources combined with Lake Eleanor (already owned by the City) which would be sufficient to supply San Francisco for the next century. The object being, if other sources were found insufficient, to advise the Government as to whether Hetch

Hetchy Valley, part of a National Park, and an excellent reservoir site, should not be granted to the City. The City was asked to prepare all data and plans, for submission to the Army Board with regard to other sources. The City Engineer prepared elaborate plans, diagrams and report of the Mokelumne Source, and in this report, dated April, 1912, the following conclusion was arrived at:—'The Critical period, August, 1907, to December, 1909, inclusive'= 518 days, 224,408 divided by 518 equals—432 million gallons daily draft available to San Francisco (from Mokelumne River). Provided all [234] rights and all reservoirs are secured and utilized this source under this assumption is sufficient to meet the requirements of the region around the Bay of San Francisco when re-inforced from a full development of Lake Eleanor.'

As the City officials were notoriously in favor of having Hetch Hetchy granted, the above report was suppressed and was not submitted to the Army Board, but an Engineer of the City was employed to prepare another report in which he concluded that—'it is *all* probability not practicable to obtain more than 60 million gallons daily from the Mokelumne.'

Only those acquainted with the unreliability of San Francisco Municipal Departments at the present time, and particularly in the past, can understand reasons for such misrepresentations.

The matter of the suppression of this report has been presented to the Congressional Committee dealing with the Bill proposing to grant Hetch Hetchy to San Francisco, and will later be taken up with the

Federal Senate Committee. But the City has brought powerful political influence to bear, and it is feared that the injustice may not be righted, although a rigid inquiry has been asked for.

However, even under the most favorable conditions it is extremely unlikely that the San Francisco authorities would purchase the Mokelumne properties for some time. And the objections made against City's actions have been those which one would naturally put forward in order to rehabilitate the value of their properties and overcome the effects of misrepresentations made regarding them.

The Mokelumne River is most favorably situated as a Sierra Source to supply Sacramento (50,000 population), Stockton (30,000), Oakland, Berkeley, Alameda and Richmond (combined population, 250,000), all of which towns are looking for and are urgently in need of a Sierra Source of Water Supply.

I have not taken the question of Municipal Water Supply into account in estimating profits, but in the hands of a financially strong company the Mokelumne River Source would be the most logical to which the tributary Municipalities would look to for a Water Supply.

According to the U. S. Census Bureau Reports, the current value of a satisfactorily developed Municipal Water Supply in the Pacific Coast States amounts to \$240.00 for 750 gallons per day of Annual Capacity, or current value of \$19,200,000 for 60,000,000 gallons per day, upon which a dividend of 4½ to 5 per cent should be obtainable. The avail-

able supply for this purpose amounting up to 350 million gallons per day from a Mokelumne Source.”

Thereupon, counsel for the plaintiff offered in evidence an article in the “San Francisco Examiner” of November [235] 30, 1913, with reference to the proposed publication of the Washington edition of said “San Francisco Examiner.” Thereupon the following occurred:

“Mr. BARRETT.—What is the particular purpose of that?

Mr. BLAKE.—For the purpose of characterizing the publication and its circulation.

Mr. BARRETT.—In so far as this might be an attempt to prove by this *ex parte* declaration of one of the defendants that Mr. Hearst got out the Washington edition, we object to it. I notice that in that article counsel is going to read some stuff with reference to the part that Mr. Hearst would have in that Washington issue. [236]

The COURT.—The jury could only regard it as affecting the defendant who would be bound by the publication. There is no evidence here before this jury so far as to any particular connection, that is, business or otherwise, with the Examiner Printing Company of its codefendant William Randolph Hearst. There is no evidence to show that he is in anywise connected with it. Mere popular rumor is not a matter on which a jury can proceed in finding a verdict. There is nothing to connect in a business way the defendant Hearst with his codefendant. So that anything of this kind that purports to emanate from the Examiner Printing Company could

not be permitted to affect Mr. Hearst unless it was connected up.

Mr. BLAKE.—I will read the deposition of—

The COURT.—Do you offer that paper?

Mr. BLAKE.—I offer the paper in evidence, yes.

The COURT.—It is admissible as to the defendant who publishes it.

Mr. BARRETT.—Yes, your Honor. We object to its being admitted at all, or the parts of it which relate to any participation therein announced that the other defendant—Mr. Hearst—might be going to have in the Washington issue.

The COURT.—That might be a different thing. If it contains statements which purport to connect the defendant Hearst with the Examiner Printing Company, the other defendant, it would have to be connected up, of course, in order to show that they were authorized to make such statement.

Mr. BARRETT.—So I understand that counsel's case and there will not be an attempt to connect it up?

The COURT.—I don't know anything about that.

Mr. BARRETT.—Then we object to it unless there is a promise from counsel to connect it up.

The COURT.—It is not objectionable as to the defendant it affects.

Mr. BLAKE.—I suppose it will all have to go in to be limited by a proper instruction by your Honor. I suppose that is the way out of the dilemma.

The COURT.—Yes.

Mr. BARRETT.—We object to your reading it to the jury at this time, or to its being admitted in

evidence, those parts of that article which purport to be a statement by this newspaper of what part the [237] defendant Hearst would have or was going to have or had in the issue in which the alleged libel here involved is contained. We object to that being read to the jury or being read in evidence for any purpose.

THE COURT.—The objection is overruled. The article upon counsel's own statement is entirely admissible as to one of the defendants. The other is to be governed by an instruction, which the jury may understand now, that the statements therein, unless there is something to show that Mr. Hearst is connected with this fellow-defendant in some manner, the jury will confine its consideration of this article to the other defendant."

Counsel for the defendants excepted to said ruling which exception the defendants hereby designate as their

Exception No. 37.

Thereupon the following occurred:

"MR. BARRETT.—We also object especially on the part of the defendant William Randolph Hearst on the same grounds, immaterial, irrelevant and incompetent.

THE COURT.—That is the one that your objection was just interposed in behalf of.

MR. BARRETT.—I want a special objection in behalf of that defendant, your Honor.

THE COURT.—The same ruling."

Counsel for the defendant William Randolph Hearst excepted to said ruling on behalf of said de-

fendant, which said ruling the defendants hereby designate as their

Exception No. 38.

Said article is as follows:

[**Extract from San Francisco "Examiner" of
November 30, 1913.]**

**"'EXAMINER'" TO PUBLISH WATER BILL
EDITION IN WASHINGTON.**

**Hetch Hetchy Measure to Have Support of Special
Issue Printed and Circulated Tomorrow
Throughout the East.**

**Stupendous Task is Result of Idea Conceived by
W. R. Hearst and Carried Out by Him
and Able Staff to Lieutenants. [238]**

**Petition, With 20,000 Names, to Help Back Up
Great Fight Against Conspirators Who
Are Striving to Defeat the Measure.**

Under the personal supervision of Mr. William R. Hearst a special sixteen-page edition of the San Francisco 'Examiner' will be printed and published in Washington tomorrow.

The object of this special edition is to bring forcibly to the attention of the Senate of the United States and to the people of the East the strongest and most conclusive arguments in favor of the passage of the Hetch Hetchy bill.

In this special edition, under which Mr. Hearst and a large staff, scattered throughout the entire country, have been working for weeks, will be concentrated and effectively presented the strongest public opinion in sympathy with San Francisco's twelve-year-long fight for an adequate water supply.

UNIQUE IN ITS LINE.

This newspaper will not only comprise the most striking and complete exposition of San Francisco's argument for the grant of the Hetch Hetchy reservoir ever presented; it will be also largest and most finished issue of a newspaper ever published for any reason so far distant from its home office.

Its publication will constitute an enterprise unique in the history of newspaper work not only in the high, unselfish purpose to which it is dedicated, but in the energy, cost and labor which have gone into its making.

This special Hetch Hetchy edition of the 'Examiner' will be printed to-night in the offices of the Washington 'Post' after having been carefully prepared by a staff of writers and editors taken to Washington from San Francisco and New York. It will be published to-morrow morning with the other Washington newspapers and circulated throughout all of Washington and its territory and throughout all the Eastern States.

The circulation of this special edition will be enormous, greater for the day than that of any other Washington paper.

COPY FOR EACH SENATOR.

Copies of it will be on the breakfast table of every one of the eighty Senators who will have the task of voting on the Hetch Hetchy bill. It is to them that the issue has been specially directed.

Thousands of copies will be circulated in every quarter where the specious arguments of the opponents of the Hetch Hetchy bill have made impression.

One of the principal endeavors made is to refute and shatter the arguments brought against the reservoir site under the disguise of nature worship.
[239]

With this special edition of the 'Examiner,' summing up with compelling force San Francisco's entire case in the Hetch Hetchy fight and with the 'Examiner' petition, bearing the signatures of twenty thousand important citizens of California, brought to bear upon the Senate at the psychological moment of its meeting to take up the bill, every one of those men who have been conducting the reservoir battle for this city will enter the lists with the Senate to-morrow confident that victory will be assured.

IDEA BORN BUT RECENTLY.

This special Hetch Hetchy edition of the 'Examiner' to be published at the doors of the Senate to-morrow, and 'The Examiner' petition with which it will be buttressed, were conceived by Mr. Hearst less than two weeks ago. At that time it first became apparent that by a costly and widespread publicity campaign the opponents of the Hetch Hetchy had made such inroads upon opinion in the East and Middle West that the bill, upon which so much depends for San Francisco, was in serious danger.

For many years this newspaper has unceasingly and strenuously advocated the Hetch Hetchy project, and Mr. Hearst, through his other newspapers and his own influence, has lent every possible assistance. When it became apparent how desperately the bill's opponents were fighting in these last

months to secure votes in the Senate Mr. Hearst decided that something more effective than had yet been done must be done, and done before the Senate got down to actual consideration of the bill.

PLANS GRATEFULLY ACCEPTED.

He suggested this special edition of the 'Examiner' in Washington and a petition from the people direct to the Senate. Both of these suggestions were gratefully and enthusiastically accepted by Mayor Rolph and his lieutenants in the fight who pledged and gave every aid.

The brief and brilliant history of the 'Examiner' petition to which, in less than five days, twenty thousand citizens subscribed their names, is already known.

HEARST GOES TO WASHINGTON.

As soon as the special Hetch Hetchy edition was decided upon Mr. Edward H. Hamilton of the 'Examiner' staff was rushed to Washington with a corps of assistants. The staff of the Heart News Bureau in Washington was placed at Mr. Hamilton's disposal. Several days ago Mr. William R. Hearst went to Washington, taking with him a complete editorial force from New York. Mr. Hearst personally assumed the task of supervising the work of preparing the edition.

The entire news-gathering machinery of the 'Examiner' was utilized under high pressure in the collection of material. [240]

EDITION FULLY ILLUSTRATED.

It was necesasry that the edition should be fully illustrated with photographs, maps, diagrams and

statistics. These were made here and expressed to Washington.

The task remained to give expression to favorable opinion throughout the country which had not yet been secured. From this office telegrams and letters explaining San Francisco's position in the Hetch Hetchy fight and combatting the arguments used by opponents of the bill were sent to every influential private and public individual and organization.

The arguments brought to bear by 'The Examiner' elicited from the *Governor* of six important Western States enthusiastic statements advocating the passage of the Hetch Hetchy bill. The opinions of these Governors are bound to have a powerful effect.

SUPPORTING OPINION FOUND.

Civic, social, political and labor organizations throughout all the metropolitan area of San Francisco and throughout California, and in every large community between the Atlantic and the Pacific were besought by the 'Examiner' to come to the aid of San Francisco in this great emergency. The arguments brought to bear resulted in directing upon the headquarters of the special edition in Washington a flood of supporting opinion that otherwise never would have been heard from.

The aid and backing of women all over the State of California and of important women in the public eye all over the country—women like Jane Addams and Mrs. John A. Logan—was sought by a bombardment of appeal directed from the offices of this news-

paper and the Hearst papers in Los Angeles, Chicago, New York and Atlanta.

In this way a torrent of favorable public opinion was directed into the office of the 'Examiner,' where it was rearranged, fabricated and prepared for publication and transmitted to the headquarters of the special edition in Washington.

TO OFFSET NATURE LOVERS.

By far the most decided opposition to the bill has been done by people and interests cloaked as 'nature lovers.' To counteract and offset the malicious and ill-founded arguments of these bogus 'nature lovers,' *bona fide* lovers of nature all over California and elsewhere were appealed to for support. From scores of members of the Sierra Club, the stationery and name of which has been utilized by alien and selfish interests to befog the issue at stake, powerful statements were secured denouncing the action of a section of the club and shattering the theory that the formation of a beautiful lake in the Hetch Hetchy valley would do aught but enhance its beauty.

The argument upon which Senator Works has been [241] basing his opposition to the bill had also to be met and destroyed. The latest theory of that senator that the bill did not properly defend the interests of Oakland and the bay cities were conclusively contradicted by officials' statements given to the 'Examiner' for this special edition by all the mayors and officials of these cities and by private citizens.

And all of this matter, making a powerful and most effective brief, comprehensive enough to fill

sixteen pages of this newspaper, will be in the hands of every Senator when he enters the Senate chamber to-day to decide the fate of San Francisco in a matter upon which almost its very existence depends.”

Thereupon counsel for the plaintiff offered and read in evidence the deposition of Hon. Thomas R. Marshall, Vice-President of the United States of America, theretofore taken on behalf of the plaintiff, in Washington, D. C., on January 20th, 1915. In the course of said deposition the following proceedings occurred:

The witness having stated that he had written an article which appeared in the Washington edition of the San Francisco “Examiner,” published in Washington, D. C., on December 2d, 1913, was interrogated with respect to his knowledge of any members of the staff of the newspapers of William Randolph Hearst, and further, in respect to the circumstances under which he had given out such statement for publication. In this behalf the witness testified as follows:

“I am not acquainted with the newspaper staff of the papers owned by Mr. William Randolph Hearst. I may know some of the members of the staff, but as to their being connected with his papers I know no one definitely to be so connected save and except that I have been informed and believe that in some way Mr. John Temple Graves is connected with the news enterprises of Mr. Hearst. Human memory is at the best uncertain. My recollection is that I had a talk with Mr. John Temple Graves, and as I observe by the next question that I am called

upon to state fully the facts and circumstances under which I signed the statement, I reserve the right to answer under that inquiry.”

The next inquiry propounded to the witness had to do [242] with the facts and circumstances under which he gave a statement which appeared in the Washington edition of the San Francisco “*Examiner*” of December 2d, 1913. In response to such inquiry the witness first stated that when the matter was first called to his attention he had informed Honorable Key Pitman, Chairman of the Public Lands Committee of the United States Senate, that he was opposed to the Hetch Hetchy bill upon the ground that the bill if passed would destroy a great beauty spot of nature. The witness then testified that subsequently he had learned that Hetch Hetchy Valley was not a great beauty spot; that he had learned this fact in Arizona and through letters of Mr. John Muir. The witness then continued:

“Thereupon, one day Mr. John Temple Graves, as I remember it, asked me whether I was opposed to the Hetch Hetchy bill. I said to him that I had changed my mind and if it came up to me I would vote for the proposition. He then asked me in substance whether I had any objection to so stating in writing, and I said I had not. I wrote the article, as I remember, and handed it to him. I did not request its publication and did not know it was going to be published, but I did not have the slightest objection to anybody on earth knowing that I had changed my mind and had withdrawn from the original statement that I had made, that if there was a

tie vote I would vote upon the Hetch Hetchy proposition.”

Thereupon, the following occurred:

“Mr. BARRETT.—We move to strike out the part of the testimony of this witness relating to a conversation and the contents of a conversation that he had with a man named John Temple Graves, on the ground that it is hearsay.

The COURT.—I will deny the motion.”

Counsel for defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 39.

Thereupon, the following proceedings occurred:

Mr. BLAKE.—I offer in evidence an article in [243] the San Francisco ‘Examiner’ of December 1st, 1913, a newspaper dispatch, under the headline ‘Marshall For Hetch Hetchy; Vice-president Will Cast Vote For Water Bill if Necessary; Gives Views to the “Examiner”; Writes for Special Edition that is to be printed in Washington.’

Mr. BARETT.—I object to that as immaterial, irrelevant and incompetent, sufficient foundation not laid, and it is hearsay. I make the objection in behalf of both defendants and for the defendant Hearst separately.

The COURT.—Now, this appears in the publication of the defendant, the Examiner Printing Company, does it?

Mr. BLAKE.—Yes, sir.”

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which excep-

tion the defendants hereby designate as their

Exception No. 40.

Said article is as follows:

[**Extract from San Francisco "Examiner,"**
December 1, 1913.]

"MARSHALL FOR HETCH HETCHY.

Vice-president Will Cast Vote for
Water Bill if Necessary.

GIVES VIEWS TO 'EXAMINER.'

Writes for Special Edition That is
to be Printed in Washington.

(Special by leased wire, the longest
in the world.)

WASHINGTON, November 30.—Reports that Vice-president Marshall was opposed to the Hetch Hetchy bill were cleared up to-day when he furnished a signed statement of his attitude for the special Hetch Hetchy edition of the San Francisco 'Examiner' to be printed in Washington on the eve of the Senate battle on the bill.

The Vice-president states that he had been opposed to the bill on sentiment before he learned the fact, but that after investigation he is for the measure, and will vote for it if his vote is needed. Following is his statement:

The Vice-president's Chamber,
Washington, D. C. [244]

It has been declared improper for the presiding officer of the Senate to express an opinion upon pending legislation, although why this is so, in view of his right to cast a deciding vote, I cannot see.

Without knowledge of the Hetch Hetchy project,

and moved solely by sentiment unbased on knowledge of its merits, I recently said that if it came to me I would vote against it. Since then I have examined the bill and the facts as found upon which it is based. I now believe the measure meritorious, and if it needs my vote, it will be so recorded.

THOMAS R. MARSHALL.

The Vice-president thus joins the long list of administration officials who are giving the Hetch Hetchy bill their hearty support."

Thereupon the following occurred:

"Mr. BLAKE.—Now, there is a dash underneath that which indicates that it is the end of the Washington dispatch, and then follows what might be called editorial comment.

Mr. BARRETT.—We make the same objection to that your Honor.

The COURT.—The same ruling."

Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 41.

The matter referred to was thereupon received in evidence, and is as follows:

"WILL COME WITH REPORT.

San Francisco's sentiments with regard to the Hetch Hetchy water problem solution and the necessity of it for this city will be brought to the direct attention of the legislature in Washington and the people of the Eastern States on Tuesday or Wednesday morning by a special sixteen-page Hetch Hetchy edition of 'The San Francisco Examiner'

printed in Washington. It had first been planned to issue this special edition this morning, but it has been thought best to make it coincident with the report of the Senate committee.

On the breakfast table of each member of this committee, as well as on those of hundreds of thousands of friends and foes alike of Hetch Hetchy, the paper will appear with its direct, convincing plea for fair play for San Francisco.

PREPARED BY EXPERT WRITERS.

This edition of the paper, far and away the [245] most elaborate of its kind ever attempted, is being prepared by a corps of expert writers and newspaper office men from the Hearst papers under the direct supervision of Mr. William Randolph Hearst.

It will contain the history and necessity of Hetch Hetchy for San Francisco's use, incontrovertible arguments in favor of the passage of the bill which will give this city its sorely needed water supply."

Thereupon the following occurred:

"Mr. BLAKE.—I desire to introduce in evidence as part of the proof of the inducement pleaded in our complaint a copy of the 'Arizona Gazette' of July 7, 1913, containing a Washington dispatch under the heading 'Hetch Hetchy Chicanery,' as going to show the wide-spread newspaper notoriety, as pleaded in the complaint of the facts of the suppression of this report as outlined and stated by Eugene J. Sullivan.

Mr. BARRETT.—That is objected to as immaterial, irrelevant, incompetent and hearsay.

The COURT.—The objection is overruled."

Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 42.

Said article was thereupon received in evidence, marked "Plaintiff's Exhibit 39," and is as follows:

[Plaintiff's Exhibit No. 39—Extract from "Arizona Gazette" of July 7, 1913.]

"HETCH HETCHY CHICANERY.

Eugene J. Sullivan of San Francisco, President of the Sierra Blue Lakes Water & Power Company, before the House Public Lands Committee to-day made charges of chicanery, suppression of report and political bias of the engineers in the interest of the Hetch Hetchy project for supplying San Francisco with water."

"Mr. BLAKE.—On identically the same subject matter I offer in evidence, as being contained in the 'Evening World Herald,' of Omaha, Nebraska, under date of July 7, 1913, under the heading: 'Alleges Crookedness in Hetch Hetchy Plan,' the following:
[246]

Mr. BARRETT.—The same objection, your Honor.

The COURT.—The same ruling."

Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 43.

Said article was thereupon received in evidence, marked "Plaintiff's Exhibit 40," and is as follows:

[Plaintiff's Exhibit No. 40—Extract from "Evening World Herald" of July 7, 1913.]

"ALLEGES CROOKEDNESS IN HETCH HETCHY PLAN.

Eugene J. Sullivan of San Francisco, president of the Sierra Blue Lakes Water & Power Company, before the house public lands committee to-day made the charges of 'chicanery,' suppression of a report and political bias of engineers in the interest of the Hetch Hetchy project for supplying San Francisco with water."

"The COURT.—This is all in support of the matter of inducement, is it?"

Mr. BLAKE.—Yes, sir, that this matter was widely discussed in the newspapers of the country. And on the same identical subject, we offer the matter contained in the 'Herald Republican' of Salt Lake City, Utah, under date of July 8, 1913.

Mr. BARRETT.—The same objection.

The COURT.—The same ruling."

Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 44.

Thereupon said article was received in evidence, marked "Plaintiff's Exhibit 41," and is as follows:

[Plaintiff's Exhibit No. 41—Extract from "Herald Republican" of July 8, 1913.]

"CHARGES CHICANERY IN HETCH HETCHY PROJECT.

Eugene J. Sullivan of San Francisco, President

of the Sierra Blue Lakes Water & Power Company, before the House public lands committee to-day, made general charges of 'chicanery,' suppression of a report and political bias of engineers in the interest of the Hetch Hetchy project for supplying San Francisco with water. Contending that there was a supply of 350,000,000 gallons daily available from the Mokelumne River, a tributary of the San Joaquin, [247] sufficient for San Francisco's needs for a century, Mr. Sullivan charged that a 'coterie of political engineers deceived Mayor Phelan, the army advisory board and the public lands commission,' and that C. E. Grunsky, an engineer, and former City Engineer Manson made 'false reports.' "

Thereupon plaintiff offered and there was read in evidence the deposition of Robert Underwood Johnson theretofore taken on behalf of the plaintiff in New York City, New York, on January 6, 1915. During the course of said deposition the following questions were asked and the following proceedings occurred:

[Deposition of Robert Underwood Johnson, for Plaintiff.]

The witness testified that he was the Mr. Johnson referred to in the article in the Washington edition of the San Francisco "Examiner" issued at Washington on December 2, 1913, under the headline "Reported Favorably to Senate," and particularly under the heading in black-faced type "Inspiration of Opposition," wherein it was stated Mr. Johnson "got very angry when Sullivan was referred to as

(Deposition of Robert Underwood Johnson.)

his friend, although he admitted receiving the information on which he had attacked the Hetch Hetchy project as a bad jobbery from Sullivan's man Aston."

The witness further testified that he had appeared before the Committee on Public Lands of the United States Senate, during the first session of the Sixty-third Congress, while House-Bill No. 7207 was under consideration, and had there stated that Mr. Taggart Aston of San Francisco, the plaintiff in the action, was his authority for certain statements made to said Committee.

Thereupon the following question was asked:

"Q. 8. You will please state whether or not on the occasion hereinbefore referred to before the Committee on Public Lands in the United States Senate, you spoke of Mr. Aston as 'Sullivan's man Aston', or whether or not you spoke of Mr. Aston in connection with any Mr. Sullivan upon that occasion. [248]

MR. BARRETT.—Objected to as immaterial, irrelevant and incompetent and without foundation in the record. It is only claimed with reference to this witness that certain things happened in connection with Mr. Sullivan. Is that not true?

MR. BLAKE.—The Court is carrying in mind at all times the libelous article.

THE COURT.—I think within the lines of my ruling the other day, growing out of the peculiar nature of this alleged libelous article which couples the name of the plaintiff here with Sullivan, that this question is competent."

(Deposition of Robert Underwood Johnson.)

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 45.

To said question the witness answered:

“I never spoke of Mr. Aston as ‘Sullivan’s man Aston’ nor in connection with Sullivan except as appears in the foregoing statement, Mr. Sullivan being under consideration by the Committee.”

The “foregoing statement” referred to by the witness, is a statement given in answer to Interrogatory No. 2 in which the witness testified that he had stated to the Committee on Public Lands of the United States Senate, that Sullivan was not his friend and that his mention of the Mokelumne region as adequate source of supply for San Francisco’s water was based on information from Taggart Aston, this information having been received from Mr. Aston’s published letter to Mr. Ferris, Chairman of the House Committee on Public Lands.

Thereupon, the following question was asked of the witness by counsel for the plaintiff; “the occasion” referred to in the question being the meeting of the Public Lands Committee of the United States Senate, previously referred to.

“Q. 9. Also please state if upon the occasion last referred to, you characterized any thing or matter, on the authority of Mr. Aston, as ‘a bad jobbery.’ [249]

MR. BARRETT.—The same objection.

THE COURT.—Is there any charge here that he

(Deposition of Robert Underwood Johnson.)

characterized it as a bad job?

MR. BARRETT.—No, your Honor.

MR. BLAKE.—Only in the libelous matter, ‘but at the house hearing it had been so thoroughly developed that Sullivan-Aston scheme was just a gross fraud that Mr. Johnson got very angry when Sullivan was referred to as his friend though he admitted receiving the information on which he attacked the Hetch Hetchy project as ‘bad jobbery’ from ‘Sullivan’s man Aston.’ They say Johnson characterized it as ‘bad jobbery.’”

The Court overruled said objection. Counsel for the defendant excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 46.

To said question the witness answered: “I never did.”

Thereupon the following proceedings occurred:

MR. BLAKE.—If the Court please, there is one piece of documentary evidence I have here that I would like to make an offer of at this time with the consent of counsel. It may have some bearing on what I shall desire to do in calling other witnesses to prove the direct connection between the defendant Hearst and this publication. I have here certified copies of the certificates which are filed with the postoffice authorities under a provision of an act of Congress of August 24, 1912, passed by the United States for the purpose of determining the proprietorship and ownership of newspaper enterprises, newspaper stocks and bonds. These affidavits, which are filed and become a part of the public

documents of the department of the postoffice, contain the names of the president and secretary, and the editors and managers of newspaper publications, the owners of stock holding one per cent or more of the total amount of stock, if it be a corporation, and the known bondholders, mortgagees or other securities holding more than one per cent of the total amount of bonds, mortgages and other securities. I make an offer of these certified copies of public documents to prove the connection of the defendant, William Randolph Hearst with the following-named papers: The San Francisco 'Examiner' of San Francisco, California; the Los Angeles [250] 'Examiner' of Los Angeles California; the Atlanta 'Georgian' of Atlanta, Georgia; the Chicago Evening 'American' of Chicago, Illinois; the Boston 'American' of Boston, Mass., and the New York Evening 'Journal' of New York, N. Y.

MR. BARRETT.—I object to that as irrelevant, immaterial and incompetent."

The Court overruled said objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 47.

The document was thereupon received in evidence, marked "Plaintiff's Exhibit 44," and is as follows:

[Plaintiff's Exhibit No. 44—Certified Copies of
Statements of Ownership, etc.]

“POSTOFFICE DEPARTMENT,
Washington.

December 26, 1914.

I, A. S. BURLESON, Postmaster General of the United States of America, certify that the annexed are true copies of the original statements on file in this Department.

In testimony whereof I have hereto set my hand, and caused the seal of the Postoffice Department to be affixed, at the City of Washington, the day and year above written.

[Seal]

A. S. BURLESON,
Postmaster General.
J. M.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF AUGUST, 24, 1912, of THE SAN FRANCISCO “EXAMINER,” published daily, including Sunday, at San Francisco, California, for October 1, 1914.

Name Of.

Postoffice Address.

President, Dent H. Robert, 1899 California St., San Francisco.

Secretary and Treasurer, W.

F. Bogart,

16 Fifth Avenue, San Francisco.

[251]

Name Of.	Postoffice Address.
Managing Editor, C. S. Stanton,	2255 Vallejo Street, San Francisco.
Business Managers, C. S. Young,	2822 Clay Street, San Francisco.
Publisher, Examiner Printing Company,	San Francisco, Cal.

Owners: (If a corporation, give its name and the names and addresses of stockholders holding 1 per cent or more of total amount of stock. If not a corporation, give names and addresses of individual owners.)

William R. Hearst, New York City.

Known bondholders, mortgagees, and other security holders, holding 1 per cent or more of total amount of bonds, mortgages, or other securities: (If there are none, so state.)

None.

Average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the six months preceding the date shown above. (This information is required from daily newspapers only.)

136,839.

DENT H. ROBERT.

(Signature of editor, publisher, business manager, or owner.)

Sworn to and subscribed before me this First day of October, 1914.

A. J. Henry,
Notary Public, (Seal.)
City & County San Francisco, Cal.

A. J. HENRY,

Notary Public in and for the City and County of San Francisco, State of California.

(My commission expires Sept. 25, 1915.)

Note:—This statement must be made in duplicate and both copies delivered by the publisher to the postmaster, who shall send one copy to the Third Assistant Postmaster General (Division of Classification), Washington, D. C., and retain the other in the files of the postoffice. The publisher must publish a copy of this statement in the second issue printed next after its filing.

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., of the Los Angeles "Examiner," published daily and Sunday at Los Angeles, California, required by the Act of August 24, 1912.

Note:—This statement is to be made in duplicate, both copies to be delivered by the publisher to the postmaster, who will send one copy to the Third Assistant Postmaster General (Division of Classification), Washington, D. C., and retain the other in the files of the postoffice.

Name Of.	Postoffice Address.
Editor, M. F. Ihmsen,	Los, Angeles, California.

[252]

Managing Editor, F. W. Eldridge,	Los Angeles, California.
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Business Manager, M. F. Ihmsen,	Los Angeles, California.
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Publisher, Los Angeles Examiner, a corporation,	Los Angeles, California.
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Owners: (If a corporation, give names and addresses of stockholders holding 1 per cent or more of total amount of stock.)

None other than William Randolph Hearst,
New York City.

Known bondholders, mortgagees, and other security holders, holding 1 per cent or more of total amount of bonds, mortgages, or other securities;

None.

Note:—As the average circulation for six months ending September 30th, 1914, was 77,475 copies and the average circulation for six months ending September 30th, 1913, was 75,161 copies, there is shown a gain of 2,314 copies.

Average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the six months preceding the date of this statement. (This information is required from daily newspapers only.)

77,475.

Average Sunday circulation for 6 months ending September 30, 1914:

146,969.

M. F. IHMSEN.

Sworn to and subscribed before me this 7th day of October, 1914.

H. O. Hunter,
Notary Public, (Seal.)
Los Angeles Co., Cal.

H. O. HUNTER,

Notary Public in and for the County of Los Angeles,
State of California.

(My commission expires May 18, 1918.)

STATEMENT OF THE OWNERSHIP, MAN-
AGEMENT, CIRCULATION, ETC., of the
Atlanta "Georgian," published daily at Atlanta,
Ga., required by the Act of August 24, 1912.

[253]

Note:—This statement is to be made in duplicate,
both copies to be delivered by the publisher to the
postmaster, who will send one copy to the Third
Assistant Postmaster General (Division of Classi-
fication), Washington, D. C., and retain the other in
the files of the postoffice.

Name Of.	Postoffice Address.
Editor,
Managing Editor, Keats Speed,	Atlanta, Ga.
Business Manager, Hugh E. Murray,	Atlanta, Ga.
Publisher, The Georgian Com- pany,	Atlanta, Ga.

Owners: (If a corporation, give names and addresses
of stockholders holding 1 per cent or more of
total amount of stock.)

The Georgian Company,	Atlanta, Ga.
W. R. Hearst, 137 Riverside Drive,	New York City.

Known bondholders, mortgagees, and other security holders, holding 1 per cent or more of total amount of bonds, mortgages, or other securities:

W. R. Hearst, 137 Riverside

Drive,

New York City.

Trust Company of Georgia,

Trustee,

Atlanta, Ga.

Average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the six months preceding the date of this statement. (This information is required from daily newspapers only.)

51,914

Distributed to agents, hotels, files, samples, employees, etc.

3,215

55,129

FOSTER COATES,

President.

Sworn to and subscribed before me this third day of October, 1914.

H. C. Crosthwait,
Notary Public, (Seal.)
Fulton County Ga.

H. C. CROSTHWAIT,
Notary Public.

My commission expires March, 1915.

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STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, etc., REQUIRED BY THE ACT OF AUGUST 24, 1912, of Chicago "Evening American," published daily except Sunday at Chicago, Illinois, for October 1st, 1914.

Name Of.	Postoffice Address.
Editor, W. A. Curley,	5431 Cornell Ave., Chicago, Ill.
Managing Editor, W. A. Curley,	5431 Cornell Ave., Chicago, Ill.
Business Manager, F. M. Lambin,	2518 No. Spaulding Ave., Chicago.
Publisher, Harrison M. Parker,	455 Deming Place, Chicago.

Owners: (If a corporation, give its name and the names and addresses of stockholders holding 1 per cent or more of total stock. If not a corporation, give names and addresses of individual owners.)

Evening American Publishing Company,
William Randolph Hearst, New York, New York.

Known bondholders, mortgagees, and other security holders, holding 1 per cent or more of total amount of bonds, mortgages, or other securities: (If there are none, so state.)

None.

Average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the six

months preceding the date shown above. (This information is required from daily newspapers only.)

363,071.

Guy A. Smith,
Notarial Seal.
Cook County, Ill.

(Seal)

HARRISON M. PARKER,

President.

Sworn to and subscribed before me this first day of October, 1914.

GUY A. SMITH,

My commission expires April 6, 1918.

Note:—This statement must be made in duplicate and both copies delivered by the publisher to the postmaster, who shall send one copy to the Third Assistant Postmaster General (Division of Classification), Washington, D. C., and retain the other in the files of the postoffice. The publisher must publish a copy of this statement in the second issue printed next after its filing. [255]

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., of the Boston "American," published daily and Sunday at Boston, Mass., required by the Act of August 24, 1912.

Note:—This statement is to be made in duplicate, both copies to be delivered by the publisher to the postmaster, who will send one copy to the Third Assistant Postmaster General (Division of Classification), Washington, D. C., and retain the other in the files of the postoffice.

Name Of.	Postoffice Address.
Editor, Arthur L. Clarke,	80 Summer St., Boston.
Managing Editor, James W. Reardon,	80 Summer St., Boston.
Business Managers,
Publisher, New England Newspaper Publishing Co.,	80 Summer St., Boston.

Owners: (If a corporation, give names and addresses of stockholders holding 1 per cent or more of total amount of stock.)

William Randolph Hearst, New York City, N. Y.

Known bondholders, mortgagees, and other security holders, holding 1 per cent or more of total amount of bonds, mortgages, or other securities: None.

Average number of copies of each issue of this publication sold or distributed, through the mails or otherwise to paid subscribers during the six months preceding the date of this statement. (This information is required from daily newspapers only.)

Daily average394,893

Sunday average341,183

Combined average387,014.

NEW ENGLAND NEWSPAPER PUBLISHING CO.

By WM. HOLMES, Treas.

Sworn to and subscriber before me this second day of October, 1914.

Junius T. Auerbach,
Notary Public, (Seal)
Massachusetts.

JUNIUS T. AUERBACH,
Notary Public.

My commission expires Dec. 18th, 1915. [256]

STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF AUGUST 24, 1912, of New York "Evening Journal," published daily except Sunday at New York, N. Y., for Oct. 1, 1914.

Name Of.	Postoffice Address.
Editor, Arthur Brisbane,	238 William Street New York City.
Managing Editor, Caleb M. Van Hamm,	238 William Street New York City.
Business Manager, James C. Dayton,	238 William Street New York City.
Publisher, Star Company,	238 William Street New York City.

OWNERS: (If a corporation, give its name and the names and addresses of stockholders holding 1 per cent or more of total amount of stock. If not a corporation, give names and addresses of individual owners.)

Star Company,	238 William Street New York City.
Stockholder—The Star Company,	15 Exchange Place, Jersey City, N. J.
Stockholder in The Star Company.	

W. R. Hearst, 238 William Street, New York City.

Known bondholders, mortgagees, and other security holders, holding 1 per cent or more of total amount of bonds, mortgages, or other securities: (If there are none, so state).

Columbia-Knickerbocker-Trust Company,	60 Broadway, New York City.
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Average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the six months preceding the data shown above. (This information is required from daily newspapers only.)

797,477.

JAMES C. DAYTON.

Sworn to and described before me this first day of October, 1914.

L. M. Powers,
Notary Public, (Seal)
New York County.

L. M. POWERS,
Notary Public No. 6 N. Y. Co.

My commission expires March, 1916.

Note:—This statement must be made in duplicate and both copies delivered by the publisher to the postmaster, who shall send one copy to the Third Assistant Postmaster General (Division of Classification), Washington, D. C., and retain the other in the files of the postoffice. The publisher must publish a copy of this statement in the second issue printed next after its filing. [257]

[Endorsed]: “No. 15,780, N. S. Dist. Court, Nor. Dist. of Cal. Pltff’s. Exhibit 44. (A) Clerk.”

The following extracts from Postal Laws and Regulations appeared upon the back of each of the foregoing certificates:

“Sec. 443. It shall be the duty of the editor, publisher, business manager, or owner of every newspaper, magazine, periodical, or other publication to file with the Postmaster General and the postmaster at the office at which said publication is entered, not later than the first day of April and the

first day of October of each year, on blanks furnished by the Postoffice Department, a sworn statement setting forth the names and postoffice addresses of the editor and managing editor, publisher, business managers, and owners, and in addition, the stockholders, if the publication be owned by a corporation; and also the names of known bondholders, mortgagees, or other security holders; and also, in the case of daily newspapers, there shall be included in such statement the average of the number of copies of each issue of such publication sold or distributed to paid subscribers during the preceding six months: Provided, That the provisions of this paragraph shall not apply to religious, fraternal, temperance, and scientific, or other similar publications: Provided further, That it shall not be necessary to include in such statement the names of persons owning less than one per centum of the total amount of stock, bonds, mortgages, or other securities. A copy of such sworn statement shall be published in the second issue of such newspaper, magazine, or other publication printed next after the filing of such statement. Any such publication shall be denied the privileges of the mail if it shall fail to comply with the provisions of this paragraph within ten days after notice by registered letter of such failure. (Act of August 24, 1912.)

2. All editorial or other reading matter published in any such newspaper, magazine, or periodical for the publication of which money or other valuable consideration is paid, accepted, or promised shall be plainly marked 'advertisement.' Any editor or publisher printing editorial or other read-

ing matter for which compensation is paid, accepted, or promised without so marking the same, shall upon conviction in any court having jurisdiction, be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500). (Act of August 24, 1912.)

3. The statement required by this section shall be made in duplicate, on Form 3526, and both copies delivered to the postmaster at the office of entry of the publication. The postmaster shall forward one copy to the Third Assistant Postmaster General (Division of Classification), and retain the other in the files of the postoffice. To enable publishers to file such statement promptly, postmasters shall furnish them copies of Form 3526 at least ten days prior to the first day of April and of October of each year. [258]

4. Postmasters shall obtain for the files of their offices a copy of the issue of each publication at their respective offices, in which the required sworn statement is published.

5. Postmasters shall give prompt and careful attention to the making and filing by publishers of the statements required by this section, and promptly report to the Third Assistant Postmaster General the failure of any publisher to file such statement, or to publish it in the second issue of the publication printed next after it has been filed, but in no case shall a publication be denied the privileges of the mail except upon departmental instructions.

6. Where exemption is claimed from compliance with the provisions of this section, the postmaster

shall request from the publisher a statement showing the ground on which such exemption is claimed and forward it to the Third Assistant Postmaster General, Division of Classification, together with a copy of the publication.

Sec. 428. Whoever shall knowingly submit or cause to be submitted to any postmaster or to the Post Office Department or any officer of the postal service, any false evidence relative to any publication for the purpose of securing the admission thereof at the second-class rate, for transportation in the mails, shall be fined not more than five hundred dollars. (Act of March 4, 1909.)” [259]

[Testimony of C. E. Grunsky, for Defendants.]

C. E. GRUNSKY, a witness on behalf of the defendants, testified that he was a civil engineer who had practiced his profession since 1878; that during the years 1912 and 1913 he was asked by the Board of Supervisors to take charge of work that had been in progress in the city engineer's office by Mr. Manson, who was then city engineer, and who by reason of illness was for a time incapacitated; that in connection with this work he was asked by Mr. Freeman, who had been called in to take charge of the Water Supply Investigation of San Francisco, to make a number of studies relating to quite a number of sources of supply, Eel River, Feather River, Yuba River, Stanislaus River, Mokelumne and others, as various possible sources of water, indicated by the Board of Army Engineers to the City as desirable of investigation; that he made use of the information that was in the city engineer's office, put a

(Testimony of C. E. Grunsky.)

number of assistants at work and gathered the information together, formulated reports upon these various sources of supply and finally submitted them to the Army Engineers; that his investigation included what is known as the Mokelumne river and the properties of the Sierra Power & Water Company.

The witness further testified that he made a special report on the Mokelumne River source of water supply, which report was transmitted under date of July 25, 1912, to Percy V. Long, the City Attorney of San Francisco, and which was delivered by the latter to the Board of Army Engineers in connection with their investigation on August 1, 1912.

The witness further testified that during the preparation of his report he had access to the so-called Bartell report and made use of it in getting up his report on the Mokelumne river source of supply; that it was referred to in his [260] report, and certain maps and diagrams contained in the Bartell report were incorporated in his report as made to the advisory board through the city attorney; that these diagrams, among others, contained one that shows the discharge of the Mokelumne river at critical periods, and that that diagram, which showed the flow of the river, the storage in the available reservoir sites and water production, was in substance the essential part of the Bartell report, and gave the conclusions which he reached, and show the location of the reservoirs by name and their capacities, the probable cost of constructing

(Testimony of C. E. Grunsky.)

dams, and other like information.

The witness further testified that there were several references in his report to the Bartell report, among others, the following on page 94 of the witness' report:

“There are also submitted with this report a number of diagrams prepared by Mr. M. J. Bartell, and submitted to the city engineer under date of April 24, 1912.”

The date mentioned being the date of the Bartell-Manson report.

Thereupon the following proceedings were had:

“Q. Is there another reference on page 58 of your book? A. There is.

Q. What is that? A. It is: ‘The normal or mean annual precipitation on this area mostly in the form of snow is 52 inches; see Rainfall Map, Sheet 10, prepared by Mr. M. J. Bartell under the directions of Mr. Marsden Manson, city engineer, and the run-off in a year of normal rainfall is about 19 inches, or 66,000 acre feet.’

Q. Is there another reference on page 62 of your report, to the Bartell report? A. There is another reference on page 62 which reads as follows, referring to a curve showing the relation between rainfall and the amount of water running off the ground. Referring to this curve, this report states:

‘The differences, also, particularly for small amounts of rain, from the curves constructed by Mr. M. J. Bartell under the direction of Mr. Marsden Manson, city engineer.’

(Testimony of C. E. Grunsky.)

I should have stated that on page 94 the quotation as I gave it a moment ago was not completed, because [261] the reference is then to four diagrams, sheet No. 9, Map of Mokelumne River Watershed, showing lands in private ownership (Bartell). Sheet No. 10, Map showing Isohyets and drainage areas; Bartell. Sheet No. 11, Mass Diagrams of the flow of Mokelumne River at Electra; Bartell. Sheet No. 14, Run-off curve; Bartell.

The COURT.—None of those references speak of it as a completed report? A. No, they simply refer to the fact that that data was in the office and had been prepared by Mr. Bartell for the city engineer, and was made use of by me in the preparation of my report.

Mr. BARRETT.—Q. What is the legend on that map? A. This is marked 'Sheet No. 11.' The title is 'Board of Public Works, San Francisco, California. 'Mass Diagram of the Water Available at Electra after allowing for Woodbridge Canal Rights, drainage of Mokelumne River, tributary to Electra, 537 square miles; prepared under the direction of Marsden Manson, city engineer, by M. J. Bartell; March, 1912.' . . .

Q. Where was it taken from?

A. This was obtained at the city engineer's office, probably in conference with Mr. Bartell, himself, with whom I advised in connection with these matters at the time that I was working on this system.

Q. I understood you to say that at the same time you were conversant with the Bartell report as filed

(Testimony of C. E. Grunsky.)

by Mr. Bartell, were you? A. I was.

Q. And had access to that?

A. I did have access to it.

Q. And based your report on it, so far as your engineering interpretation of the Bartell report was concerned?

A. I based such information that I took from the Bartell report on these diagrams and from the typewritten report itself. I had a copy of that report in my possession. . . .

Q. Now, will you say that all of the engineering significance of the Bartell report was incorporated by you in yours?

A. It was, in the form of this diagram that I have referred to. . . .

Q. Will you kindly look at the Bartell report and see what map or sheet you have reference to there, referring to Plaintiff's Exhibit 22?

A. The sheet that I referred to as sheet No. 11 in my report appears as sheet No. 3 in the Bartell report. . . .

Q. I will ask you what in your judgment was the significance of the Bartell report? . . .

The COURT.—They are simply asking his opinion as to the engineering significance and the value of the Bartell report.

A. The Bartell report enumerated a number of available reservoir sites in the watershed of the Mokelumne River. It enumerated a number of established rights to the water of the Mokelumne River. On the basis of that information and a study of

(Testimony of C. E. Grunsky.)

the flow of the Mokelumne River largely based upon rainfall studies and an assumed amount of runoff bearing relation to the rainfall, Mr. Bartell determined that the [262] water production of the river, that is to say, a uniform output of the river, could be maintained throughout two critical periods; one period was from 1897 to 1899 and the other was from 1907 to 1909. This study made by Mr. Bartell was based on a definite assumption with reference to the amount of water that could be held back in reservoirs to equalize the flow of the river. It was made in the way in which the engineer makes his studies in order to determine the availability as a source of water for municipal supply where it is necessary that the quantity of water shall be available at all times. The report is valuable in showing a definite conclusion relating to what the result will be if the amount of storage that Mr. Bartell assumed is actually made available and in effective localities. That information is on the diagram and to that extent the report is valuable to the engineer making a study of the availability of the Mokelumne River. The report does not purport to be and is not an analysis of the ultimate water production of the Mokelumne River. Mokelumne River affords a great deal more water. The mean annual flow of the Mokelumne River is from 800,000 to 1,000,000 acre feet in a year, and if reservoirs could be made large enough to equalize the flow of the river, the river would produce very much more water than has been set forth by the

(Testimony of C. E. Grunsky.)

Bartell report. The Bartell report is therefore simply a study that is of use and valuable to the engineer analyzing the situation.

Q. And who was the engineer analyzing the situation for the Board of Army Engineers?

A. Mr. Wadsworth.

Q. And you on behalf of the city?

A. I on behalf of the city at that time.

Q. Did you have other engineers' reports from which you made up your book besides Mr. Bartell's?

A. I did most of the work on the Mokelumne River myself in person. There were others that worked for me, but I did the principal work myself.

Q. Did you undertake to just report to the army board *verbatim* what other men had reported to you, or did you undertake to get up for the city a report of your own based upon what you investigated, and what others reported to you?

A. I undertook to make a report of my own, using the information that was available from all sources; I should say that in the report I submitted to the army engineers there is incorporated an earlier report which has been referred to in this case as the Manson report of 6 years ago, or rather, of six years earlier, but which is, in fact, a report of the city engineer, Mr. Woodward. He was then city engineer. Associated with him in making the report were Mr. Manson and Mr. J. R. Price. It has been known as the Manson report, because Mr. Manson was the engineer most familiar with the situation, and who undoubtedly did most of the work con-

(Testimony of C. E. Grunsky.)

tained in that report. As that report contains some valuable information, it was incorporated [263] in my report and transmitted with mine to the army engineers.

Q. Why was not the Bartell report included in your report to the engineers?

A. Because the Bartell report was a study of the situation by a subordinate in the office for his superior officer. It was not a finished report in any sense of the word.

The COURT.—Q. The six years earlier report by Mr. Manson was simply by an assistant; he was not the engineer in charge at the time.

A. Mr. Manson was employed as consulting engineer for the purpose of preparing this report, and ranked practically as the city engineer himself would.

Q. I thought you said Mr. Woodward was the city engineer then?

A. Mr. Woodward was the city engineer. The Board of Public Works, or the Board of Supervisors, authorized the preparation of a report by Mr. Manson and Mr. Price, who thus became associated with and ranked with Mr. Woodward, who was the city engineer. In the case of Mr. Bartell, he was an assistant in the city engineer's office, without any rank to make an independent report. It took the form of an independent report in this case. It took the form of an independent report that was submitted to the city engineer for his information. But it was simply a special study with reference to that one

(Testimony of C. E. Grunsky.)

matter, and then the cost estimate of the project itself. There was a cost estimate also in the Bartell report, but made for the information of his superior.

. . . .
Mr. BARRETT.—Q. Will you explain the engineering significance of the map which you hold in your hand? You engineers understand it; I want you to explain it so the jury can understand it.

A. This map, sheet No. 11, shows in mass diagrams or curves the flow of the Mokelumne River—

The COURT.—He has gone over this, Mr. Barrett.

A. (Continuing.) for the two critical periods I have already mentioned.

Mr. BARRETT.—Q. Just exhibit to the jury.

A. There is on this sheet a table showing a certain number of reservoirs on Railroad Flat, No. 1 North Fork Reservoir, San Francisco Gas & Electric Developed Storage; San Francisco Gas & Electric Valley; the No. 2 North Fork Reservoir, which summarized show a total storage in million gallons of 80,658. This amount of storage—80,658 acre feet—when taken in connection with the mass curve which represents a summation of the flow of the river from month to month shows that the daily production from 1907 to 1909 would be 432,000,000 gallons daily on the average. A similar diagram for the period from 1897 to 1899, this diagram shows that the daily water production would be 306,000,000. This diagram further shows in a note the prior water rights in addition to the Woodbridge Canal Rights are:

(Testimony of C. E. Grunsky.)

‘20 mil. gals. daily to Jackson and vicinity from Amador Canal;

‘10 mil. gals. daily to Volcano Ditch; [264]

‘16 mil. gals. daily to Mokelumne Hill and Campo Seco Ditch;

‘10 mil. gals. daily to Crarke Ditch.

‘56 mil. gals. daily.’

The COURT.—Q. Already appropriated?

A. Already appropriated; and of those amounts we subtract from the two amounts I have named, 432,000,000 gallons and 306,000,000 gallons daily it will show the net amount of water available after compensation water is deducted from those amounts. There is other information on this table relating to evaporation in Lake Eleanor, and also the cost of the dam that would be necessary to affect the storage the cost per million gallons, and then the area of the water surface, together with remarks relating to the reservoirs.”

The witness further testified that at page 147 of his report he submitted to the army engineers the proposition of the Sierra Blue Lakes Water and Power Company, which was followed by a supplemental report by C. M. Burleson, who was engineer for the company, showing cost of construction of plant, 60,000,000 gallons per day; also that he included a second and third supplementary report by Mr. Burleson.

Thereupon the following proceedings were had:

“Mr. BARRETT.—Q. Now, Mr. Grunsky, I will ask you whether or not in representing the City you

(Testimony of C. E. Grunsky.)

suppressed from the Board of Army Engineers any data obtained by you upon the question of availability as a water supply for San Francisco, of the Mokelumne source? A. No, sir, none at all.

Q. Did you misrepresent the facts as you found them? A. I did not."

The witness further testified that he was not sure whether at the time he was getting up data and reports for the Board of Army Engineers and had access to the original Bartell report he was familiar with certain pencil memoranda written thereon by Mr. Manson. The witness' attention was then called to the matter contained in the Bartell-Manson report, partly in typewriting and partly in the pencil memorandum of Mr. Manson, as follows: [265]

"The critical period, August, 1907, to December, 1909, inclusive, 518 days: 222,408 divided by 518 equals 432 million gallons daily draft to San Francisco; provided all reservoirs be secured and utilized this source under this assumption is sufficient to meet demands of the region around the Bay of San Francisco when reinforced from a full development of Lake Eleanor."

And thereupon the following proceedings were had:

"Mr. BARRETT.—Q. What was the engineering significance of that note?

A. It is to this effect, that if there was a full development of Lake Eleanor and the related sources of supply, the amount of water that could be produced on the Mokelumne River would be sufficient

(Testimony of C. E. Grunsky.)

to meet the demands of the region about the Bay of San Francisco. I should take it that whoever wrote this into this report was of that opinion.”

On cross-examination Mr. Grunsky testified that he could not say positively that he had ever seen the pencil memorandum or addendum last referred to before it was shown to him on the witness stand; that he had no recollection on the subject, and that if he had seen it he did not think he would have noticed it in his report to the Army Board even though coming from Mr. Manson. He also testified in connection with the Bartell-Manson report as follows:

Mr. BLAKE.—Q. Now, I want to call your attention to the Bartell-Manson report and ask you to state wherein it lacks completion for the purpose of informing the Advisory Board of Army Engineers or the Secretary of the Interior with reference to the data called for by the order of continuance of May 27, 1910?

The COURT.—You mean wherein it falls short of containing data such as the Army Board required?

Mr. BLAKE.—No, the order of the Secretary of the Interior.

The COURT.—Yes, that goes without saying; there is no necessity of repeating that every time, Mr. Grunsky, on your direct examination you said the Bartell report was not really a finished report, that it was merely the furnishing of data to a superior; he now asks you wherein it falls short [266] in its elements of a finished report for that purpose?

(Testimony of C. E. Grunsky.)

A. It is incomplete in that it does not review the entire situation on the Mokelumne River. It deals with the quantity of water that can be produced on the Mokelumne under certain assumed storage conditions; it gives the cost estimate of a project.

Mr. BLAKE.—Q. Are you familiar with Mr. Manson's handwriting?

A. Yes. This says: 'Showing an estimated cost of the system of \$40,978,680.'

Q. For the supply of how much water daily to San Francisco? A. 200,000,000 gallons daily.

Q. Instead of asking you, where in your opinion the report, if at all, shows that it was intended to be a complete report with reference to a water supply from that source to San Francisco?

A. The cover of the report is labelled 'Mokelumne River as a Water Supply for the City and County of San Francisco, April 24, 1912.' The report is addressed to Mr. Marsden Manson, City Engineer. The copy that I have in my hand has no signature.

Q. Well, you recognize it to be the so-called Bartell report, do you not?

A. I recognize this as the report which has been referred to as the Bartell report.

Q. I call your attention to the matter at the top here. What would that signify with reference to the object in furnishing that data as a completed report upon the matter it contained?

A. The note which you refer to is 'Ready for typing except refer note (now) to Bartell, M. M.' the M. M. undoubtedly means Marsden Manson.'

(Testimony of C. E. Grunsky.)

The witness further testified with respect to the maps in the Bartell report, as follows:

“The first sheet is entitled ‘Drainage Basin of the Tuolumne River, above Electra, showing private and public lands therein.’ This sheet was incorporated in my report.

The second sheet is ‘Mokelumne River Drainage Basin, drainage and Isohyets.’ These are lines of equal amount of rainfall. This was also incorporated in my report as I recall it now.

Sheet No. 3 is the sheet already referred to, showing the mass curve of run-off, Mokelumne River. That was incorporated in my report.

Sheet No. 4 is a regional map, showing the location of conduits from different sources of water supply for the City of San Francisco. This map was not incorporated in my report but similar information was.

Sheet No. 4a, is a profile map showing the elevation of the ground along a proposed conduit route. It is entitled ‘Mokelumne River Project, Profile of conduits and pipe lines from Electra [267] to San Francisco.’ This was not incorporated in my report, but a similar profile map of my own was incorporated.

Sheet No. 5 is entitled ‘Rainfall and Run-off studies Feather River to Merced River, inclusive, Sierra Nevada Mountains, California.’ This was not incorporated in my report.

Sheet No. 6 shows ‘Rainfall and run-off studies Feather River to Merced River, Sierra Nevada

(Testimony of C. E. Grunsky.)

Mountains, California, run-off curves.' On this sheet are a large number of curves showing the relation between rainfall and run-off. The curve is compared with the amount of water flowing in the various streams or vicinity from the Sierra Nevada Mountains. Of these curves the one entitled 'High Sierras run-off curve based on all available data of the Tuolumne River, Stanislaus River, Mokelumne River, American River, Bear River, Yuba River, for the season 1909-10 inclusive, M. J. Bartell' was incorporated in my report; the other curves were not.

. . .
Q. Just take 'Plaintiff's Exhibit 22,' Mr. Grunsky, and refer to the first diagram tabulation that appears in the main report itself, entitled 'Mokelumne River run-off, inches, depths, the depth of catchment area' and state whether or not that was incorporated in your report. A. It was not.

Q. Turn to the next one, which is entitled 'Mokelumne River Drainage Area, tributary to Electra, 537 square miles'; was that tabulation included in your report?

A. Not in the form in which it is here presented.

Q. Turn to the next one, which is entitled 'Mokelumne River Drainage Area, tributary to Electra period 1906-07 and period 1908-09, inclusive, 537 miles'; was that included?

A. Not in this form, but all of this information and I think these figures are given, the guagings that were made by the United States Geological Survey, and as far as they were available they are

(Testimony of C. E. Grunsky.)

in my report. That applies to the other diagram also.

Q. I hand you a map entitled 'San Francisco Water Supply Investigation, Mokelumne River, discharge and possible utilization, by C. E. Grunsky': That shows that that data was drawn from what source?

A. This data was drawn from the records of the State Engineer's Department for the years 1879 to 1884; from the United States Geological Survey from 1896 to 1900; from the records of the United States Geological Survey from 1905 to 1910. I am not sure with referenc to the data from 1896 to 1900. That may have been approximated from guagings of a nearby river. [268]

Q. Now I will ask you in connection with this same subject matter, whether or not that represents any original work done in this matter by Mr. Bartell?

The COURT.—What are you referring to,—the paper which you showed him?

Mr. BLAKE.—Yes. What is that paper entitled, Mr. Grunsky?

Mr. BARRETT.—Is that part of the Bartell report, Mr. Blake?

Mr. BLAKE.—Yes, so I understand.

Mr. BARRETT.—Well, just a minute. I object to that as immaterial, irrelevant and incompetent and not cross-examination.

The COURT.—He has not offered it.

Mr. BARRETT.—But he is making inquiries

(Testimony of C. E. Grunsky.)

about what it is.

The COURT.—He has asked the witness about it.

Mr. BLAKE.—Q. Have you ever seen that before? A. I have.

Q. This is separate and additional data prepared firsthand, is not in the catchment?

A. I think that is a study which was based upon the rainfall in that region.

Q. Now, I ask you whether or not the tabulation which I just showed you, is not the same tabulation that appears in this Bartell report. The pages are not numbered.

A. The insert in the report contains more information than the blue prints which you were just showing me.

Q. Yes, than the photographic copy.

A. It cannot be a photographic copy of the sheet that is in this report.

Q. Now, for the purpose of correcting the record on this matter, I show you the sheet in 'Exhibit 22,' and a similar sheet in the photographic copy which is No. 43. They are identical, are they not?

A. Yes.

Q. And that would show, as you have testified, original data obtained by Mr. Bartell in addition to what the Government reports showed with reference to the same matter?

A. Yes, I think it does, and I think it is the same original material I used in preparing the diagram which was shown here a moment ago.

Q. You used the same data to prepare your report?

(Testimony of C. E. Grunsky.)

A. I used whatever I could get from Mr. Bartell.

Q. But that particular map and diagram was not used by you in your report except as you transferred the matter into your report?

A. That is, the tabular matter, and I used the material that is in that."

Thereupon the following proceedings were had:

"Mr. BLAKE.—Q. I call your attention to what apparently would be a photographic copy of this map, entitled 'Map of North Fork Reservoir Site, Mokelumne River,' and which has been testified to be a part of the Manson report, 'Plaintiff's Exhibit 22'; now, [269] will you state whether or not that map is not in the Bartell report, if that is the one you refer to?

A. That is a map which was made by Mr. Terry for Mr. Manson, entirely independent of the Bartell report; that is some of the information that was not in the Bartell report, showing that the Bartell report was not a completed report.

Q. Was this Terry map used by you as you received it from the city in presenting the same matter to the advisory board in your report?

A. It was used by me, yes, sir.

Q. Would that be true of the legend on the map under the designation or title 'Estimated capacity of reservoir site'? A. Yes, sir."

Whereupon the following proceedings were had:

"Mr. BLAKE.—Q. State whether or not the photographic map appearing in your report here 'Map of North Fork Reservoir Site' is a photograph

(Testimony of C. E. Grunsky.)

of this map which I now show you and put in your hands?

A. The photographic copy does not show certain pencil notes that are on the other map. The tabular statement relating to the estimated capacity of the reservoir site as shown on the original map is different from the legend which appears on the photographic copy which I have put into my report.

Q. State what the differences are.

A. The table which appears on the photographic copy was apparently from another table that was pasted or placed upon this map when it was photographed, evidently later information.

Q. State if you can read them, the difference in capacities.

A. The photographic copy—the capacity is noted on the photographic copy for a water surface 315 feet above the foundation elevation; it is here given in acre feet at 82,143; in million gallons, 26,760. On the original map the capacity is given at what appears to be an elevation of the dam of 341 feet; the lowest elevation here noted at the dam site is contour 2484 and the last for which the capacity is noted is 2825. The capacity of the reservoir is noted in acre feet at 122,354.2 and in million gallons 39,866.

Q. What is the difference in million gallons per day?

A. You would have to divide 13,000,000,000 by 365. It would be about 40,000,000 gallons per day.

Q. State, Mr. Grunsky, where with reference to determining the supply of water to San Francisco

(Testimony of C. E. Grunsky.)

under your report—with reference to these capacities where you located your draw-off, with reference to the bottom of the dam? In calculating your capacities in million gallons daily for San Francisco, where did you locate your draw-off?

A. It had no relevancy, as I recall it, to the North Fork Reservoir. The 60,000,000 gallons that I suggested as a possible draught upon the Mokelumne [270] River would come from the South Fork, from the Railroad Flat, reinforced with water from the Middle Fork of the Mokelumne River; then that was followed by a statement that if more water were to be developed from Mokelumne River there would have to be storage on the North Fork or elsewhere in a very large amount. The dams that were suggested and that are referred to in my report are explained as being dams of exceptional height, very high, unusually high, such dams as an engineer does not like to undertake. The dam suggested on this map that you that you have just shown me would be a higher dam than the one that was assumed by me as the probable limit, and as shown on the photograph.

Q. As I understand your answer it is that so far as your calculations were concerned you did not go into the matter of reducing these various capacities to million gallons per day out of certain particular reservoirs and locating the draw-off; but suppose, as a matter of fact, that in the Bartell report such calculations were entered into, and that in entering into those calculations Mr. Bartell took his draw-off

(Testimony of C. E. Grunsky.)

over 80 feet above the bottom of his dam, what would you say then would be the effect in reducing the capacity of those reservoirs as a daily supply to San Francisco?

A. I don't think I can answer that question."

Thereafter, on recross-examination of Mr. Grunsky, the following proceedings were had:

"Mr. BLAKE.—We desire to offer in evidence this map (the Terry Map) together with the photographic copy, appearing at the page of Mr. Grunsky's report as to which testimony has been given.

The WITNESS.—May I make an explanation with reference to the answer that I made? I was asked to examine the photographic copy and state from what elevation upward the capacity of the reservoir was shown in that tabulated material. It is from an elevation of about 86 feet above what here is noted as the elevation of the foundation. The area of the reservoir at that elevation is about 80 acres and the quantity of water beneath that is very small.

The COURT.—You have figured that out?

A. I have simply refreshed my mind with reference to it. It was so difficult to see the figures that I was not able to state that from a mere inspection.

The following also occurred on the cross-examination of the witness Grunsky:

"Mr. BLAKE.—Q. Mr. Grunsky, are you able to say whether or not the report which you saw in the city's possession and known as the Bartell report was not simply a clean typewritten report, without

(Testimony of C. E. Grunsky.)

any of those maps and tabulations attached to the [271] sheets which you have testified to this morning as not having been given to the advisory board?

A. The Bartell report which I saw had attached to it those flaps or tabular material, to a number of pages.

Q. And had attached to it that particular page which gives additional calculations taken in the field by Br. Bartell?

A. I am quite sure that it did unless there had been a substitution of pages.

Q. That related to the Railroad Flat diagram, to the Railroad Flat reservoir, did it not?

A. I don't understand that question.

The COURT.—He has just asked you about the tabulation attached to a particular page, or rather, to a particular tabulation; now, he says that that relates to the Railroad Flat diagram.

A. He will have to indicate that in the report so I will know what he means; that is what I mean when I say that I am not able to answer the question. This diagram, or rather, the tabulated material to which Mr. Blake calls my attention, is tabulated material bearing the heading 'Mokelumne River drainage area tributary to Railroad Flat Reservoir, period 1896 to 1900.'

Mr. BLAKE.—Q. Was that given to the Army Board in that report?

A. In my report it was not given to the Army Board.

Q. Turning now to that written addenda, in the

(Testimony of C. E. Grunsky.)

handwriting of Mr. Manson, would not your attention have been caught and fixed by the words of that addenda as being almost in the identical words of the order of the Secretary of the Interior upon the city to furnish data of that particular kind and character?

A. It certainly would have struck me that that is substantially what the Secretary of the Interior has asked the city to show. This statement that is made in pencil in the report is a conclusion which is particularly obvious. The requirement that the Secretary of the Interior made of the city of San Francisco was an absurdity on its face; at the same time it put the city to the necessity of showing that other sources of water than the Hetch Hetchy when taken together with Lake Eleanor would be adequate to supply San Francisco. Now, there was no question that there were such sources, and there is no question that the Mokelumne was one of those sources. The Mokelumne River, in conjunction with Lake Eleanor and with the developments about the Bay of San Francisco would have been a supply that might have furnished water to San Francisco until this city has a population somewhere between 4,000,000 and 5,000,000 people, but that statement as it was made is based upon certain assumptions that are clearly stated in connection with the pencil statement." . . .

“Q. If you had taken your data from the Bartell report as to the reservoir capacity, do you recall how much capacity you would have gotten on the

(Testimony of C. E. Grunsky.)

Mokelumne catchment?

A. The Bartell report in that respect differs from mine mainly in the inclusion of what he calls No. 2 North Fork Reservoir, showing a capacity of about 16,700,000 gallons of water. [272]

Q. Have you stated what the difference between the reservoir capacities which you estimate and the reservoir capacities which are estimated in the Bartell report amount to?

A. I have just stated, yes, that that is about the difference. I don't remember exactly what the figures were in the aggregate.

Q. So that when you stated a while ago on direct examination that all of the data that was supplied or might have been supplied by the Bartell report was available through your report to the Army Board, that is hardly correct, is it, Mr. Grunsky?

A. It is absolutely correct, because I included that in my report, and it is in there, and is attached to it and is available to anyone who examines it.

The COURT.—Q. What is the difference, then, Mr. Grunsky—merely in the conclusion you deduce from it?

A. The reason why this particular reservoir was not enumerated in the tabulation was that I had not personally visited that reservoir site; I knew about the others, I had personal knowledge about the others.

Q. I thought you not only took the results from your own calculations, but also from the data given in Mr. Bartell's report.

(Testimony of C. E. Grunsky.)

A. But Mr. Bartell, in this table, as I recall it now, gives the information in this way:

‘No. 2 North Fork Reservoir, elevation 3850, height of dam 300 feet (?); storage, million gallons, 16,700.’

The cost of dam is then given, and the cost per million gallons, and other information. The reservoir was included by Mr. Bartell evidently with some certainty as to its availability.

Mr. BLAKE.—Q. Why availability? He was there, was he not, on the ground?

A. The question of a reservoir and the availability of a reservoir depends upon the configuration of the ground, upon the character of the dam site, upon the height of the dam required to make the storage effective and worth while, upon the cost that is involved in constructing the dam, and also upon the catchment that is above the reservoir site.”

The witness further stated that when he said he had incorporated two or three Burleson reports and the data of Bartell, he did not mean to indicate that he included every scrap of data that was available, and that he did not want his report and the conclusions drawn therefrom to be bound by the inaccuracies contained in the other reports that he might have appended to his report. Thereupon, the following occurred: [273]

The COURT.—I want to ask a question of the witness.

Q. If that is so, Mr. Grunsky, why was it that you did not append the Bartell report to yours when

(Testimony of C. E. Grunsky.)

you sent it in to the Army Board?

A. It is not the custom to include in a report the reports that are made by the subordinates in a department. They are studies that are made for the information of the chief. As chief engineer, I have had reports made by a great many of the assistants, and made use of them as I chose. If I choose to submit the information, I do it; if I think it is unnecessary to do that, I don't submit it.

The COURT.—This matter had been in a manner vised by Mr. Manson, the head of the office?

A. I don't know about that, your Honor, and I doubt it very much. My recollection is that the Bartell report was an unsigned report.

The COURT.—You said you did not remember about this addendum made by Mr. Manson.

I am not sure whether I saw that addendum or not. Even that addendum is not signed. My recollection is that the Bartell report bears on its face the notation that it is the Bartell report. Whether it was a signed report, I am not sure. The custom has always been in the city engineer's office to have manuscripts typed in four or five copies and then those copies are available for use. No particular copy is the original as a rule.

The COURT.—Are all the copies signed?

A. In most cases they would be.

The COURT.—You don't really know, then, whether you had presented to you from the city attorney's (engineer's) office what purports to be

(Testimony of C. E. Grunsky.)

the original with these notations on by Marsden Manson?

A. There is, as I understand it, no original copy of the Bartell report. The Bartell report was at my disposal in the city engineer's office, and I had it in conference with Mr. Bartell so that I knew all about the Bartell report at the time I was using it. I had a copy of it for my own use. As I recall it, my report was a complete report, but it did not have the pencil memoranda on that have been referred to.

The witness' attention was called to the following matter contained on page 160—c of the Freeman report:

“Mr. C. E. Grunsky concludes that it is in all probability not practicable to obtain more than 60 mill. gallons daily from the Mokelumne. Above is shown his profile for a 200 mill. gals. daily supply, which he finds would interfere seriously with irrigation needs, principally because of lack of sufficient storage at low elevations on the North Fork.”

In connection with the foregoing the witness stated:

“A. Mr. Freeman states that my conclusion is [274] that in all probability it is not practicable to obtain more than 60,000,000 gallons daily from the Mokelumne. That should be qualified by stating that that is probably the total amount that could be taken from the Mokelumne at the present time and under conditions as they obtain there, knowing the necessity of obtaining a large amount of Mokelumne River water for local use, not as a limit of the

(Testimony of C. E. Grunsky.)

water production that is possible on the Mokelumne.

The witness' attention was also called to the following matter contained at page 160 of the Freeman report, where, after referring to various obsolete sources of information from which the various data contained in the Grunsky report was supposed to have been drawn, Mr. Freeman said:

“All of these previous investigations had so plainly brought out the disadvantages of the Mokelumne that Mr. Grunsky evidently was impressed with the unwisdom of spending any large sum of money at the present time for further field work in detail, and so bases his statement upon the facts already on record. Moreover, there was not time for any extensive new field work after Mr. Grunsky was called in to take up the work which Mr. Manson had not completed at the time of his illness.”

Thereupon, the following occurred:

“Mr. BLAKE.—Now, do you take the position, Mr. Grunsky, that this report which carries the addenda of Mr. Manson is not such a complete report as was within the purview of the order of the Secretary of the Interior?”

A. I think that that report is a report within the purview of the requirement of the Secretary of the Interior. I am not responsible for the statements which Mr. Freeman has there made.

Mr. BLAKE.—Q. As a matter of fact, are you not in some doubt as to whether or not all of the data which had been accumulated under Mr. Manson's supervision for two years, from 1910 to 1912,

(Testimony of C. E. Grunsky.)

in regard to these Mokolumne sources, that some of the data was not possibly withheld from you?

A. There was none withheld from me.

Mr. BLAKE.—Q. What about the essential statement of Mr. Manson's?

A. That is not an essential statement.

The witness was then shown the map of the North Fork Reservoir site, known as the Terry Map, whereupon the following occurred: [275]

“Mr. BLAKE.—Q. Can you tell me whether that map ever went to the Board of Army Engineers in that form?

A. It may have gone to the Army Engineers in this form, but it was not submitted to them by me in that form, but it was in the form of a photograph of this map with the change that has been referred to this morning.

Q. The form of photograph which you testify to is the form shown in your report, on page 6, with a legend on a paster.

A. This appears on page 80, of my report, and is called Sheet 6, and with a photographic reproduction of the map as named in its title, with the information in the table, modified from the black line print which you have just showed me.

Mr. BLAKE.—And that modification reduced the capacity of that reservoir by some 45,000,000 daily draft?

A. Not at all. The contour lines are the same as on the other sheet; the table does not carry the information as far as the table on the other map

(Testimony of C. E. Grunsky.)

That is the difference between the two.

The COURT.—Q. What was the cause of that change in that table?

A. I think the conclusion was that the calculation had been carried beyond the reasonable limits of the height of any dam. That was all. Therefore, the reservoir was brought into the calculation at what seemed to be a proper height for the dam at that locality.

Mr. BLAKE.—Q. Is it not true, Mr. Grunsky, that that modification which you say is confined only to a matter of mere calculation—in other words, there could have been no misleading of anybody by this table and diagram under the title ‘Estimates, capacity of reservoir site,’ there could have been no misleading according to that map, except as to carrying the calculations just a little bit further, in accordance with the height of the dam?

A. This might have been misleading, because the inference would have been, if I submitted this, that I endorsed the higher dam, which I was not willing to do.

Q. Do you testify that that is the only inference that might properly be drawn from the change in the legend there?

A. I do not wish to testify to that; there may be other inferences drawn.

The witness was asked on redirect examination, why he did not consider the notation on the Bartell-Manson report made in the handwriting of Mr. Manson and immediately following the words “The criti-

(Testimony of C. E. Grunsky.)

cal period August, 1907, to December, 1909, inclusive, 518 days, 222,408 divided by 518 equals 432 million gallons daily draft to San Francisco," which said notation is as follows: [276]

“Provided all reservoirs be secured and utilized this source under the assumption is sufficient to meet the demands of the region around the Bay of San Francisco when reinforced from a full development of Lake Eleanor, but the cost is manifestly prohibitive.”

was of any engineering value. The witness answered:

“Because it is an obvious statement. The City of San Francisco was receiving from the Spring Valley Water Company about thirty-five to forty million gallons of water per day; the capacity of its developed supplies was about thirty-five million gallons per day. It can develop and is developing on Calaveras Creek on the Alameda side of the bay like amount of water or something approximating that. Lake Eleanor and its related sources are capable of supplying approximately 150,000,000 gallons a day. If the suppositions made in that statement are correct and this amount of water could be obtained, all the rights and reservoir sites acquired and developed, adding 250,000,000 a day to Lake Eleanor and related supplies, plus the amount that is already available to San Francisco, there would have been water enough for a population of about 5,000,000 people.

Q. In a word, you consider it of utterly no im-

(Testimony of C. E. Grunsky.)

portance from an engineering standpoint; is that right?

A. That is the point, yes, sir."

Upon the further cross-examination of Mr. Grunsky the following proceedings were had:
[277]

Mr, BLAKE.—“Q. Were you called upon by the city to make, in conjnutcion with Messrs. Hyde and Marks, or by yourself, an examination of the amount of water flowing out of the Alameda creek and available to the city of San Francisco?”

Mr. BARRETT.—Objected to as immaterial, irrelevant and incompetent, and not cross-examination.

The COURT.—How does that bear on his direct examination?

Mr. BLAKE.—That would lead up to the question of another suppressed report.

Mr. BARRETT.—What, are you going to abandon this one and take up another one?

The COURT.—Well, the witness has testified that he afforded the Board of Army Engineers all of the data of any material value that had been gathered for the city; if this was such data he can be cross-examined upon it.

Mr. BARRETT.—But this has nothing to do with the Mokolumne. As I understood your Honor's ruling, your Honor limited us very closely as to this Bartell report. We did set out to broaden very much what the city did do for that board by the way of supplying everything it could get hold of—

(Testimony of C. E. Grunsky.)

The COURT.—I made no limitation. You have not offered anything except as to whether he furnished them the data that was contained in the Bartell report.

Mr. BARRETT.—I started out to show the wider scope that the investigation of the city took on this matter, and all that it did supply to the board.

The COURT.—In what respect?

Mr. BARRETT.—In respect to the Mokelumne catchment and its availability.

The COURT.—Exactly, and there was no limitation put upon you there at all.

Mr. BARRETT.—I thought your Honor once said that the only charge was the suppression of this Bartell report, and you would limit us as to what was done with that report.

The COURT.—But that was in connection with the suggestion that all that was of value to the engineers contained in that report had been afforded to the Army Board. I let you show anything that was put in there. [278]

“Mr. BLAKE.—Q. You stated on your direct examination, Mr. Grunsky, as I understood you, that so far as your connection with the city was concerned in reporting on these various water supplies, that there was not anything suppressed from the Army Engineers.

A. I don't know that I stated that. I made a number of reports to the city attorney's office, and I am not responsible for what he transmitted to the Army Engineers.

(Testimony of C. E. Grunsky.)

Mr. BLAKE.—Q. There was a time when there was an interregnum between the time that Mr. Manson was incapacitated and the time that you commenced to report to some superior officer in the city engineer's department. That is true, is it not?

A. You mean by that that for a time Mr. Manson was not capable of discharging his duties as city engineer while there was nobody there to take his place? . . . There was an assistant city engineer there, and the work in the city engineer's office went on as before. But special attention should be devoted, or was required for the investigation of a water supply. As soon as it was ascertained that Mr. Manson was incapacitated, which was, I presume, a few days after he found it necessary to take a complete rest, I was asked to take charge.

Q. This will mark the distinction as to how your reports were handled. Up to August 1st, when your report on the Mokelumne went into the Army Board, you were reporting directly to the Army Board were you not?

A. No, I was never reporting directly to the Army Board.

Q. I so understood you to testify this morning.

A. Oh, no, I did not so intend to be understood.

The COURT.—This report of yours was made for the city authorities?

A. It was made for the city authorities, and was sent to Mr. Percy Long, the city attorney, who was handling the city's case.

(Testimony of C. E. Grunsky.)

Mr. BLAKE.—Q. Then you don't intend to be understood as having testified in any way to-day that your report in the form you made it ever did get to the Army Board?

A. Oh, yes, I do want to say so, and I do know that; I saw it at the office of the Army Board, and handled it there, and I was conversant with that fact.

The COURT.—Q. You do not know of your own knowledge, then, what other data and engineering facts that had been gathered by the city were furnished to the Army Board?

A. No, there may have been a great deal furnished that I have no knowledge of.

Mr. BLAKE.—Q. With reference to your employment at or about this time to furnish a report of the run-off from Alameda Creek proper of the Spring Valley Water Company, that report of yours was turned in when?

Mr. BARRETT.—That is objected to as not cross-examination, and as immaterial, irrelevant and [279] incompetent.

Mr. BLAKE.—If your Honor please, we would like to follow this up—

The COURT.—Is it in response to his direct examination?

Mr. BLAKE.—He made a most general statement with reference to the work he did for the city, and that it got to the Army Board.

The COURT.—If it is a part of his work that went to the Army Board, it is relevant.

(Testimony of C. E. Grunsky.)

Mr. BLAKE.—That is what it is going to, your Honor.

The COURT.—What did he testify to about that? He didn't testify to that report.

Mr. BLAKE.—He did not testify to that report, but it is a part of the services he performed for the city in furnishing data to the Army Board.

The COURT.—If it was work furnished for that purpose, you have a right to cross-examine him upon it.

Mr. BLAKE.—Q. You have not testified as to whether you were employed to make such a report.

A. I was.

Mr. BARRETT.—Your Honor, I made an objection. Is my objection overruled?

The COURT.—Before I rule on that objection, I will ask this question:

Q. Was that work you did with reference to Alameda Creek, was the result of your work a part of the data you furnished to the Army Board?

Mr. BLAKE.—Or that should have been furnished under the order?

A. That was work done at the request of Mr. Freeman for his information and in connection with his work, and I think that report was addressed to Mr. Freeman. It may have been addressed to the city attorney.

The COURT.—Q. But it was for the information of the Army Board, was it?

A. It was supposed to be used by Mr. Freeman for that purpose. [280]

(Testimony of C. E. Grunsky.)

The COURT.—The objection is overruled.”

Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 48.

To said question the witness answered.

“The statement I made this morning with reference to turning in everything to the Army Board related to the matter that bore upon the report that was then under discussion.”

“Mr. BLAKE.—Q. Do you know what became of that report of yours that you turned in? Did it go to the Army Board?”

Mr. BARRETT.—That is objected to as immaterial, irrelevant and incompetent, and not cross-examination.

The COURT.—The objection is overruled.”

Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 49.

To said question the witness answered:

“The report was delivered very late.”

“Mr. BLAKE.—Q. When was it delivered?”

Mr. BARRETT.—We make the same objection.”

To said question the witness answered:

“I don’t remember the date. I have not had occasion to look at it for a long time. I think [281] that was delivered some time in October or November.

(Testimony of C. E. Grunsky.)

THE COURT.—Q. Delivered to whom?

A. I think to the city attorney, or perhaps directly to Mr. Freeman, I don't recall that now.

MR. BLAKE.—Q. You did not deal with Mr. Freeman directly under your employment by the city, did you?

A. Oh, yes. Oh, yes. Mr. Freeman was acting for Mr. Long, as Mr. Long's agent in this entire matter. Mr. Freeman and Mr. Long were handling the case in Washington for the city.

Q. It was all a matter of gathering data for the same purpose?

A. Yes, sir, gathering data. There had been quite a number of questions submitted to me originally which had nothing to do with the Mokelumne River. Some time in the spring of 1912 a telegram came from Mr. Freeman requesting the city to have Professor Marks of Stanford, Prof. Hyde of the University of California, and myself review the data that was obtained from the Spring Valley Water Company with reference to the flow of Alameda Creek and the tributary known as the Calaveras Creek. He thought that the total output of water from those sources was much less than was claimed by the Spring Valley people. That investigation continued through a number of months. It was not completed until late in the summer, and the information was not finally reviewed by Mr. Freeman until the hearing was well under way. So that that material was delayed in its transmission.

MR. BLAKE.—Q. Were your conclusions upon

(Testimony of C. E. Grunsky.)

that investigation favorable or unfavorable to the Spring Valley Water Company's contention?

MR. BARRETT.—I object to the question as immaterial, irrelevant and incompetent, calling for the opinion and conclusion of the witness and not cross-examination; upon the further ground that it is not the best evidence.

THE COURT.—I don't see the materiality of that.

MR. BLAKE.—I might put it in this way, in the terms of the city's contention, as to whether or not it minimized or exaggerated the flow of water out of that basin. In other words, was it against the interest of the city with reference to their claims as to the amount of water from that source.

MR. BARRETT.—Objected to as immaterial, irrelevant and incompetent, not proper cross-examination.

THE COURT.—It is not a question of whether it was against the city's interest or not; it is a question whether the results of his investigation were furnished to the Army Board.

MR. BLAKE.—I think motive is material in this matter. We have to meet the question of motive. We opposed it by questions of motive. If it was in the interest of the city to suppress this report, it might throw some light why it was not handed to the Army Board until it was drawn out from Mr. Freeman in the city of Washington on November 25, [282] when this order to show cause was returnable.

(Testimony of C. E. Grunsky.)

THE COURT.—In that view, I will let you ask about it.

MR. BARRETT.—I object to it as immaterial, irrelevant, and incompetent, calling for the opinion and conclusion of the witness, and not cross-examination. We save an exception. I would add the additional ground, your Honor, that it is not the best evidence.

THE COURT.—The objection is overruled.”

Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 50.

To said question the witness answered:

“I cannot say as to whether it was favorable or unfavorable to the City or to the Spring Valley Water Company. The finding with reference to the quantity of water flowing in Alameda Creek was not at great variance with what was claimed by the Spring Valley Water Company.”

[Testimony of Marsden Manson, for Defendants.]

MARSDEN MANSON, a witness called on behalf of the defendants, testified that he was city engineer of San Francisco from January, 1908, until the middle or latter part of 1912; that he held that position at the time the Secretary of the Interior of the United States appointed a Board of Army Engineers to report to him on the water situation of San Francisco and that he came in contact with that board in his official capacity and with the principal engineer in charge of all of their investi-

(Testimony of Marsden Manson.)

gations, Mr. Wadsworth. He further testified that all data collected by his office was sent to the board directly and part of the time to Mr. Wadsworth. He also testified that he had made personal investigations of the Mokelumne and was familiar with its general features; that Mr. Aston in making representations with regard to Mr. Manson's addendum regarding the quantity of water available upon the Mokelumne, had not included a further addendum by Mr. Manson which stated, "but the [283] cost is manifestly prohibitive."

Mr. Manson's attention was then called to an instruction given by him on the same page of the Bartell report containing the conclusion regarding quantity and costs of taking water from the Mokelumne as follows:

"put in capitalized value of Sierra & San Francisco Power Company plus \$6,000,000 Blue Lakes plus cost of developing 60,000,000 gallons given."

and the witness stated that the \$6,000,000 represented the price asked for the Blue Lakes properties.

Upon cross-examination Mr. Manson testified that at the time he ordered the Blue Lakes properties to be put into the final report at \$6,000,000, he knew they were not worth that figure; but that was the figure placed upon the properties by the Sierra Blue Lakes Water & Power Company, and that he knew of the rule of law that the higher use—the domestic use—gave the right to a municipality to

(Testimony of Marsden Manson.)

condemn such properties, as against their use for hydro-electric purposes, or for mining or for anything like that. He further testified that the Bartell-Manson report was quite complete, covering Mr. Bartell's instructions.

The witness further testified upon cross-examination that he was present at the meeting of the San Francisco Civic Center on November 5, 1913, when there was a discussion of the water supply problem; that he recalled that Mr. O'Shaughnessy and Mr. Long spoke there and that Mr. Aston read a paper referring to the particularly essential statement that is relied upon in the Bartell-Manson report and that the witness did not take any exceptions to any unfair deductions or statements made by Mr. Aston at that time. [284]

Thereupon the following occurred:

MR. BLAKE.—You stated that all of this material and data that had been prepared on the part of the city with reference to the Mokelumne sources was made available to the Board of Army Engineers; I wish you would take the original Bartell-Manson report, 'Plaintiff's Exhibit 22,' and state with reference to the tabulations, and so forth, which appear in the report proper and state whether they ever went to the Army Board?

A. The final transmission of all of the data in that and other reports to the Board of Army Engineers was done after I was incapacitated from work in the office. Whilst I was there all data in the office was made available to Mr. Wadsworth whenever he wished it.

(Testimony of Marsden Manson.)

Q. Do you not know of your own knowledge whether or not Mr. Wadsworth or any member of the Advisory Board knew of this corrected and annotated copy of the Bartell-Manson report at any time?

A. I do not."

Upon plaintiff's case in chief it was shown that after he had discovered the Bartell-Manson report in the office of the city engineer, in June, 1913, the following letters were exchanged between him and Mr. Wadsworth in relation thereto:

**[Letter, Dated July 1, 1913, from Taggart Aston to
H. H. Wadsworth.]**

San Francisco, Cal. July 1, 1913.

"Mr. H. H. Wadsworth,
Assistant Engineer, U. S. Engineers,
Customhouse, San Francisco, Cal.

Dear Sir:—

Will you kindly advise me in writing if there was submitted to or used by the Advisory Board of Army Engineers to the Secretary of State (Interior) in their report of February 19, 1913, a certain report dealing exclusively with the Mokelumne River as a source of water supply to San Francisco made by Mr. Bartell, assistant city engineer, to Mr. Manson, city engineer, in April, 1912, and containing some 15 elaborately prepared maps and diagrams relative to the proposed Mokelumne supply—this presumably being the data which the Secretary of the Interior had requested that the city 'should secure and furnish at its own expense and with due diligence to the Advisory Board of Army Engineers, so that they

could make their determination upon outside sources' such as the Mokelumne River.

Further, kindly inform me if you have ever seen, or heard of, the Bartell report above referred to, except through the medium of newspapers within the past few days, or through my telephone message [285] to you last week.

I am about to give evidence before a congressional committee regarding this matter and am desirous of having this information.

Yours very truly,
TAGGART ASTON."

[Letter, Dated July 1, 1913, from H. H. Wadsworth to Taggart Aston.]

"July 1, 1913.

Mr. Taggart Aston,
Consulting Civil Engineer,
San Francisco.

Sir:

Replying to your communication of this date, I would say that the report mentioned by you, viz: one made by Mr. Bartell, assistant city engineer to Mr. Manson, city engineer, dealing exclusively with the Mokelumne River as a source of water supply for San Francisco, does not appear in the list of reports received from the officials of the city, as published in the report of the Advisory Board of Engineers.

I am very confident that no such report was submitted to the board. The only complete file of all reports received is at the office of the Secretary of the Interior in Washington.

(Testimony of Marsden Manson.)

Answering your second question, I have never seen nor do I remember hearing of such a report until you mentioned it over the telephone a few days ago. I might add, however, that during the progress of investigations conducted by the city I had several interviews with the city engineer and with Mr. Bartell. Considerable at least of data obtained and their deductions therefrom were made accessible to me, and were used in preparing my report to the board.

Very respectfully,

H. H. WADSWORTH."

Upon the further cross-examination of the witness Manson, the following occurred:

"Mr. BLAKE.—You have stated that your own personal investigations on the Mokelumne were made prior to this order of the Secretary of the Interior with reference to what data the city should furnish on the show cause order; is not that *that* true?"

A. I think that is the case though I may have gone up there subsequently; I cannot recall it if I did.

Q. You heard this read repeatedly, from page 160 of the Freeman report, with reference to the date that Mr. Grunsky relies upon, and he speaks of your previous study and information. He refers to these previous reports here, does he not?

A. Yes, sir.

Q. He does not in any way refer here to any [286] studies that were made between the years

1910 and 1912 by you, does he?

The COURT.—Mr. Manson has stated that he did not make any new and original investigation.

Mr. BLAKE.—If your Honor please, that is exactly the point I am trying to reach by cross-examination. This Bartell report is made up entirely upon the basis of new and original studies.

The COURT.—I am talking about Mr. Manson, personally.

Mr. BLAKE.—Then I will reach that in another way, your Honor. Q. It is a fact, is it not, Mr. Manson, that from the year 1910 to 1912 there was a continuous line of work being done under your direction as city engineer for the purpose of determining the question of water supply out of the Mokelumne catchment?

A. There was; it was not continuous, but it was at frequent intervals.

Q. In fact, each and every one of those thirteen maps and diagrams, including the tabulations attached to and made a part of the principal report of Mr. Bartell represents that particular special work, does it not? A. Yes, sir.

Q. And, therefore, the conclusion is an absolute one, is it not, that so far as Mr. Freeman is concerned, he omits all reference to that work?

A. I think not.

Q. 'All of these previous investigations'—referring to your previous investigation and Mr. Grunsky's knowledge from boyhood and Colonel Mendel's report—'had so plainly brought out the disadvantages of the Mokelumne that Mr. Grunsky

(Testimony of William Bade.)

evidently was impressed with the unwisdom of spending any large sum of money at the present time for further field work in detail and so bases his statement upon facts already on record: Moreover, there was not time for any extensive new field work after Mr. Grunsky was called in to take up the work which Mr. Manson had not completed at the time of his illness. I have not visited the region myself, but have carefully reviewed the data presented by Mr. Manson and Mr. Grunsky.'

Mr. BARRETT.—That is objected to as irrelevant, immaterial and incompetent, and not proper cross-examination.

Mr. BLAKE.—Q. (Continuing.) Is not that true? A. I think not.

The COURT.—I don't think this is at all material, or in cross-examination."

[Testimony of William Bade, for Plaintiff, in Rebuttal.]

On rebuttal, the plaintiff called as a witness William Bade, who testified that he was a Professor of Semetic Literature and Achaeology in the Pacific Theological Seminary, and that he was in Washington from November 25 to 30th, attending the hearings upon the return of the show cause [287] order before Secretary Fisher, and that he was present throughout said hearings. Thereupon the following occurred:

"Mr. BLAKE.—Q. State whether or not at those hearings anything came out with reference to the suppression of any engineering reports which had

(Testimony of William Bade.)

been prepared for and on behalf of the city?

Mr. BARRETT.—Objected to as immaterial, irrelevant and incompetent and not rebuttal.

The COURT.—What is the object of this?

Mr. BLAKE.—This is for the purpose of showing with reference to its character as rebuttal—I would state that it appears in defendants' case that all of the engineering data which the city was under duty to furnish to the Army Board under this order did in fact reach this particular quarter, the Advisory Army Board, as and when called for in the order; I now tender proof that at the time of the hearing of this show cause order before Secretary Fisher it became apparent that the city had withdrawn and suppressed the so-called Grunsky-Marks report with reference to the Alameda Creek run-off, the question as to which was raised in Mr. Grunsky's testimony.

The COURT.—I don't know that I exactly understand you. How do you propose to show that?

Mr. BLAKE.—By a witness who was present at the hearing and who knows of the transaction as a matter of fact.

The COURT.—But the question here is narrowed to a question whether these officials suppressed anything from the Army Board.

Mr. BLAKE.—Yes, the city officials. It has been testified to here that Mr. Freeman was representing the city.

The COURT.—Well, we will see what it is.

Mr. BLAKE.—Q. Was Mr. Freeman present at the hearing? A. Yes, sir.

Q. And Mr. Freeman was there in the representative capacity of furnishing or accounting for the furnishing of data which the Secretary had called for under the order of continuance, the show cause order?

Mr. BARRETT.—Objected to as calling for the opinion and conclusion of the witness and not the best evidence.

Mr. BLAKE.—That is direct and original evidence.

The COURT.—He certainly can testify as to what his ostensible authority was there.

Mr. BARRETT.—But that is not the question.

The COURT.—Unless it is shown that he was not there, that would be good.

Mr. BARRETT.—We take an exception.

Which exception the defendants hereby designate as their

Exception No. 51.

[288]

To which question the witness answered:

“Mr. Freeman expressly stated he was representing the city officials and Mr. Fisher so accepted him.

Thereupon the following occurred:

Mr. BLAKE.—Q. State whether or not anything came out at that hearing with reference to any suppressed report which had not been furnished up to the date of that hearing?

Mr. BARRETT.—We object to that as immaterial, irrelevant and incompetent and not rebuttal. In the first place this has to do with events in 1912, before Mr. Aston had any connection with this thing

at all. In the next place, it seems to me that at the last minute it would shove this case from the question of this suppressed report—the Bartell report—on to other matters which are not at issue here. All of the alleged libel and all that sort of thing, and the slander, as set forth, had to do with that particular report. It is true your Honor allowed the witnesses to say that they did not suppress anything but that was with reference to matters before the Army Board.

The COURT.—So far as that is concerned, it is the same thing. I would not consider it relevant but for the fact that your witnesses have all testified that they suppressed nothing.

Mr. BARRETT.—From the Army Board.

The COURT.—Well, the Army board represented the Secretary of the Interior.

Mr. BARRETT.—I don't make that point as an artificial technical objection; but your Honor has confined this case to the question of whether their charge that this Bartell report was suppressed was made in good faith and had any foundation. Now, in the course of that and as illustrating how limited this collateral testimony was, these witnesses said there was nothing kept from the Army Board; therefore, unless this case is going to proceed on to another matter, a hearing before the Secretary, it has to be confined not for technical but for substantial reasons to the dealings of the city with the Army Board.

The COURT.—But this is the situation; the question here is whether this Bartell report was sup-

pressed; your witnesses have all testified that they afforded to that Army Board—because that board represented the Secretary of the Interior—all of the data that was available for the purpose. If it should appear in rebuttal that some data was suppressed the jury would not be bound by their statements that they afforded all that was material in the matter of the Bartell report. [289]

Mr. BARRETT.—I am only trying to keep the case within the confines reasonably marked out for it. Take the situation at this point; those men who were our witnesses have left here; it was not called to their attention that there was going to be any question of suppressing anything before Secretary Fisher.

The COURT.—Oh, no; the question is not here whether it was suppressed before Mr. Fisher; the question is whether the question came up there of any data having been suppressed. That would relate not only to the Army Board but to the entire inquiry. I think it is proper in view of the testimony on behalf of the defendants.

Mr. BARRETT.—We save an exception.”

This exception the defendants hereby designate as their

Exception No. 52.

To said question the witness answered:

“Yes, sir.”

“Mr. BLAKE.—Q. State what if anything appeared at this hearing as coming from the city, or the representatives of the City of San Francisco, which showed that there was in existence a report

with reference to any available water supply to San Francisco which had not reached the Army Board or the Secretary of the Interior up to that time?

Mr. BARRETT.—Objected to as immaterial, irrelevant, incompetent and not rebuttal, not the best evidence and calling for the opinion and conclusion of the witness.

The COURT.—Let him answer it and see what it leads to.

Mr. BARRETT.—Exception.”

This exception the defendants hereby designate as their

Exception No. 53.

To said question the witness answered:

“On the complaint of Mr. McCutcheon to Secretary Fisher that the Marks-Grunsky-Hyde report, that they had never been permitted access to it although repeated requests had been made; upon that representation by Mr. McCutcheon, Secretary Fisher asked for that report, if there was such a report.

The COURT.—Q. Asked who?

A. Asked Mr. Freeman, representing the city. Mr. Freeman then produced the report and said it was the only copy he had, and turned it over to Secretary Fisher, and he to the Advisory Army Board who also stated that they had not had access to it.

Mr. BARRETT.—I now move to strike out all the answer, including that which followed the [290] question of the Court interrupting the witness, upon the ground that it is immaterial, irrelevant and incompetent, hearsay, and not the best evidence.

The COURT.—I am inclined to think that the statement of the Army Board in the presence of the Secretary would be hearsay.

Mr. BARRETT.—Mr. McCutcheon was a representative of Spring Valley, not of the city.

Mr. BLAKE.—Q. How far does your Honor's ruling extend? Only as to what concerns the Army Board?

The COURT.—The testimony that they had never seen it.

The COURT.—Q. What did Mr. Freeman say when this inquiry arose, about the suppressed report?

Mr. BARRETT.—I object to the question as immaterial, irrelevant and incompetent and not rebuttal and calling for the opinion and conclusion of the witness.

A. Mr. Fisher called for the report.

Mr. BLAKE.—Q. What did Mr. Freeman say?

Mr. BARRETT.—Same objection, your Honor."

The Court overruled the objection. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 54.

To said question the witness answered:

"Mr. Freeman then handed over the report and said it was the only copy he had, but he was willing to turn it over to Secretary Fisher and the Army Board."

"Mr. BARRETT.—I now move to strike out all the testimony of the witness with respect to the proceedings before Secretary Fisher upon the ground

(Testimony of Taggart Aston.)

that they are immaterial, irrelevant and incompetent and not rebuttal and not the best evidence and hearsay.”

The Court denied said motion of counsel for the [291] defendants. Counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 55.

Upon cross-examination the following occurred:

“Mr. BARRETT.—Q. Where is Mr. Freeman now, do you know?

A. I suppose at his home in Providence, Rhode Island.”

**[Testimony of Taggart Aston, in His Own Behalf
(in Rebuttal).]**

Thereafter on rebuttal the plaintiff testified as follows:

“Mr. BLAKE.—Q. I will ask you whether or not this exhibit, which is marked ‘Plaintiff’s Exhibit 27 for Identification,’ was attached to any data that was attached to the Bartell-Manson report?

A. This was copied from the paster that was put over that large map on which they had arbitrarily reduced the amount of water in the North Fork Reservoir for the presentation of that map to the Army Board. This shows, as Mr. Grunsky pointed out, an assumed draw-off of 86 feet above the bottom of the reservoir, which really amounts to about two months’ supply to San Francisco at the present time to bring them over a dry period—an arbitrary reduction of the amount of storage in that particular reservoir.”

(Testimony of Taggart Aston.)

Plaintiff's Exhibit 27 for identification was then offered in evidence. Counsel for the defendants objected to said document on the ground that it was immaterial, incompetent, irrelevant and not rebuttal. The Court overruled said objection and counsel for the defendants excepted to said ruling, which exception the defendants hereby designate as their

Exception No. 56.

Said document is as follows: [292]

**[Plaintiff's Exhibit No. 27—Table of Quantities,
Norfolk Dam & Res.]**

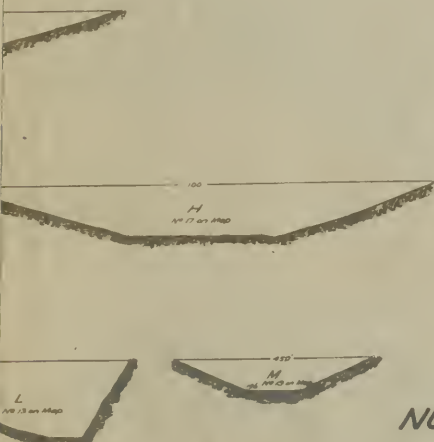
TABLE OF QUANTITIES—NORTH FORK DAM & RES.

Contour.	Dam Quantities.			Reservoir Quantities.				
	Area Sq. Ft.	Int.	Vol. Cu. Ft.	Area Acres.	Vol. Bet. Con. Acre Int. Ft.	Capacity Acre Ft.	Above 2550 Million Gallons.	
2464	24,854	Foundation elev.						
2500	41,673	36	1,197,468					
2550	55,651	50	2,433,100	80.1				
2600	58,766	50	2,860,425	168.8	50	6,222.5	6,222.5	2.027
2650	57,202	50	2,899,200	286.7	50	11,387.5	17,610.0	5.737 (3710)
2700	47,090	50	2,607,350	428.1	50	17,870.0	35,480.0	11.558 (5.821)
2750	29,876	50	1,924,150	640.3	50	26,710.0	62,190.0	20.260 (8.702)
2779	Water Surface			735.8	29	19,953.0	82,143.0	26.760
2789	22,361	39	1,081,621					
Strip	134,471	10	1,344,710					
Total			16,347,974			82,143.0		
			605,480					

[Endorsed]: "No. 15,780. U. S. Dist. Court, Nor. Dist. of Cal. Pltff's Exhibit 27. (M) Clerk."

The foregoing table is the same as that appearing on the map of North Fork Reservoir site, being the map designated as "Sheet No. 6" in the report made by the witness Grunsky.

Thereupon counsel for the plaintiff offered and there was received in evidence a copy of the original "Terry Map," a photographic copy of which is as follows: [293]

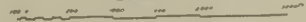


**MAP
OF
NORTH FORK RESERVOIR SITE
MOKELUMNE RIVER CALIFORNIA
SIERRA BLUE LAKES WATER & POWER CO'S PROJECT
BOARD OF PUBLIC WORKS SAN FRANCISCO CALIFORNIA.
SURVEYED UNDER THE DIRECTION OF MARSDEN MANSON CITY ENGINEER.**

BY CHARLES W. TERRY

DRAWN BY *Charles W. Terry*
TRACED BY *Eugene Bueya*
SEPT 1911

Scale.



Transit Book N^o 25.
Level Book N^o 28

The foregoing map also appeared as Sheet No. 6 in the Grunsky Report. Across the legend of said map there was pasted instead thereof the calculations hereinbefore set forth as "Plaintiff's Exhibit 27" for identification, which calculations did not appear on the original Terry Map.

The plaintiff further testified upon rebuttal, that the reason why he had not called attention to Mr. Manson's statement that the cost of the Blue Lakes project was "manifestly prohibitive" was because he expected an inquiry and fully intended to show that Mr. Manson's estimates were padded; that they were not prepared upon the same basis as the Hetch Hetchy, the unit costs were nearly double, and some of the items were nearly treble what they ought to be; that none of the Mokolunne reports were prepared upon the same basis as the Freeman report.

Thereupon the following occurred:

Mr. BLAKE.—I would like you to turn to the page in the Bartell report which contains the essential statement, so-called, and give your explanation of that added matter and how it came to be photographed right side up?

The WITNESS.—I will first give my explanation why I put this statement as I did put it in communicating with Washington. I considered the cost did not come in at all, for this reason; the [295] Secretary of the Interior in his order stated that if the amount of supply was found available from another source, that then Hetch Hetchy should be eliminated, and Hetch Hetchy should not be included unless it was an absolute necessity. Therefore, the

only matter of interest to the congressional committee and to my mind was the amount of supply. Now, as regards the cost, this report of Mr. Bartell's is padded to such an extent that it goes on to the point of reductio ad absurdum. He has \$40,000,000 for bringing in a 60,000,000 gallon supply—

Mr. BARRETT.—Just a minute. I object to this as not rebuttal.

The COURT.—That is not rebuttal. All you are asked is to state why in your communications to the officials in Washington you did not call attention to this further statement that appears on the opposite page. It appears in a peculiar sort of way.

The WITNESS.—It appears like this on this page, you would have to hold it up to the light to see it.

The COURT.—I suppose this line running over here is intended to connect it up.

The WITNESS.—And further, I consider that Mr. Manson had perforce to arrive at this conclusion because of Mr. Bartell having found this essential amount of water. It struck me at once that Mr. Manson, who is in favor of Hetch Hetchy, adopted the subterfuge of saying that the cost was exorbitant, and he fixed that cost on his estimate at \$40,000,000, which is absolutely preposterous, because in making that estimate they came around about 50 miles, they don't take the proper course to start with—and then—

Mr. BARRETT.—(Interrupting.) Just a minute. I object to this as not rebuttal.

The COURT.—This is not rebuttal.

Mr. BLAKE.—Your Honor, it does seem to me to be absolutely rebuttal.

The COURT.—It is rebuttal to permit him to state why he omitted that.

Mr. BLAKE.—Just proceed with that.

Mr. BARRETT.—Why, he didn't photograph it right.

The COURT.—That is not what he is asking him. That doesn't make any difference.

The WITNESS.—That is the way it would photograph (indicating).

The COURT.—Yes.

The WITNESS.—If you have any knowledge of photography that is the way it photographed. If you fold it this way you will see just where this comes.

Mr. BARRETT.—Why didn't you photograph the page it was on?

Mr. BLAKE.—I will reach that point.

The COURT.—The question the witness is entitled to answer is to explain why he omitted that statement of the other part of the addendum made by Mr. Manson on that report? [296]

The WITNESS.—You would have to look through the back of this, Mr. Barrett, to see it.

Mr. BARRETT.—You don't look through the back of the page that it is written on, do you?

A. No, but this was not the page that it was written on.

Mr. BLAKE.—Q. Mr. Aston, you are getting away from the question.

The COURT.—He is explaining the manner in

which it appears on a photograph of it. Of course, it appears backwards, and necessarily would.

Mr. BARRETT.—Unless the front of the page that it was on was photographed.

The COURT.—But they were photographing the other page.

The WITNESS.—This is the front of the page and this was written on the back of the page in Mr. Grunsky's (Mr. Bartell's) report.

Mr. BLAKE.—Q. The point Mr. Barrett wants to make, and I will help him make it, is this: why didn't your blue-printer when he turned over the page photograph the same page twice?

A. He would have to photograph every page twice in that case. Here is another page where there is nothing on the back. Here is another page. Here is another page. Anything written on the front in pencil you would have to turn it back and look through it. Nearly all the pages were the same where any writing was written on the back of them.

Q. Now, state why, in your consideration of this matter, you did not deem Mr. Manson's statement that the cost was prohibitive an essential matter?

A. Because I expected an inquiry and I fully intended to show that Mr. Manson's estimates were parted (padded), that they were not prepared on the same basis as the Hetch Hetchy, the unit costs were nearly double, some of the items were nearly treble what they ought to be. None of the Mokelumne reports were prepared on the same basis as the Freeman report—it gave my client's property a black eye by saying that it was more expensive than it ought to be.

The plaintiff further testified that the significance of the Railroad Flat diagram, contained in the Bartell report, lay in the fact that from it there would have been found, from Mr. Bartell's own data, 366 million gallons of water per day from the upper Mokelumne catchment of 430 square miles, if it had been submitted to the Army Board.

The taking of testimony closed on the 3d day of February, 1915. The foregoing constitutes all of the evidence with respect to the exceptions of the defendants hereinbefore noted.

Thereupon the cause was argued by counsel for the [297] respective parties, and the Court gave to the jury the following instructions:

[Instructions of Court to Jury.]

“Gentlemen of the jury: All that remains in this case now in order that it may be finally submitted to you is that the Court shall give you the principles of law that must govern you in your consideration of the evidence in the case for the purpose of reaching a verdict; if you will give me your attention for a few minutes I shall proceed and give you those instructions.

This is an action for damages alleged to have been suffered by plaintiff from the publication by defendants in a special Washington edition of the San Francisco ‘Examiner’ of an article regarding him which plaintiff alleges was a libel, and that the publication was actuated by malicious motives.

A libel of the character alleged is a false and unprivileged publication by writing or printing which exposes any person to hatred, contempt, ridicule, or

obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation. The element requisite to make injurious language libelous is its falsity, since a publication, however injurious, is not a libel if it be true. It is not essential to constitute a libel that the publication be made with malice. A publication may be libelous, however innocently made, if it be false, the element of malice affecting only the measure of damages.

No one has a right to publish of or concerning another any false and unprivileged statement of a libelous character without rendering himself liable to the injured party for the damages resulting to him therefrom; and this applies to newspaper proprietors, editors or publishers equally with others. That is to say, newspapers as such have no peculiar privilege in that respect; and defamatory matter, although published in a [298] newspaper in good faith in the honest belief in its truth, if false, is not privileged because published as a mere matter of news. While the Constitution of the United States, and that of the State as well, guarantees the right of freedom of speech by the citizen and the liberty of the press, this guaranty is not intended to protect one against false and defamatory words uttered to the injury of another, nor the newspaper from responsibility for the publication in its columns of that which is false and defamatory and so libelous. The term 'Freedom of the press' consists in a right, in the conductor of a newspaper, to print what he chooses, without any previous license, but subject,

if unprivileged, to be held responsible therefor to the same extent that any one else would be responsible for the publication.

There is no claim in this case that the publication sued on if libelous was in any way privileged. A privileged publication is one which, so far as we are here concerned, is a fair and true report, without malice, of a judicial, legislative, or other public official proceeding, or of anything said in the course thereof, and it is not contended that the article in question falls within that category; the defense of the defendant Examiner Printing Company, while admitting the making of the publication, being that the matters therein stated concerning the plaintiff were true; and that of the defendant William Randolph Hearst being that he was in no way responsible for the publication in question; that is, he denies all the allegations of the plaintiff's complaint tending to connect him with the publication complained of. Under these defenses, so far as the defendant Examiner Printing Company is concerned, it is not necessary for plaintiff to show that the article complained of [299] was published by it, since that fact is admitted, and the question to be first determined as to that defendant is whether the statements made in the article were true. If they were true, then that defendant is not responsible in damages; if they were not true, but were libelous, then the plaintiff will be entitled to a verdict for such damages as the jury may deem him entitled to under the principles I shall hereafter state to you as to the measure of their award. As to the defend-

ant William Randolph Hearst, the first question for the jury will be whether he made or was responsible for the publication of the article in question; and if you find that he either advised, directed, or instigated the publication, then he is responsible for it the same as if he himself had made it. If you find him responsible for the publication, then the question will be, as with the other defendant, whether the statements published were true. If they were true, there is no ground of recovery; if they were false, then, as with the other defendant, he would be responsible for such damages as the jury may award against him. Whether he is responsible for the publication may be made to appear either by direct evidence of the fact or by circumstances warranting the inference of such fact. As to both defendants, the burden is upon the plaintiff to make out this case entitling him to recover by a preponderance of the evidence, that is, by evidence which satisfies the jury that to some extent it is stronger and more satisfactory as a basis of their verdict than that which is opposed to it.

The publication or article sued on has been read to the jury and they are acquainted with its contents so that I need not here repeat them.

The plaintiff, by innuendoes in his complaint—and [300] the term ‘innuendoes’ is meant here in its technical sense to designate a feature of the pleading—has assigned a meaning to certain sentences or phrases in the alleged libelous statements. Where the words employed may be understood in more than one sense, it is the office of an innuendo to

designate that meaning which the plaintiff proposes to establish as the meaning intended by the defendant or understood by those who read them. An innuendo, however, can neither add to nor change the natural meaning of the alleged libelous words. The jury are the judges of whether or not the meaning of the libelous words is that assigned in the plaintiff's complaint.

If you find, under the principles I have stated to you, that the publication complained of was a libel upon plaintiff, there are two classes of damages which may be awarded—compensatory and exemplary. If it was made without malice, then plaintiff will be entitled to compensatory damages only, and you should award him as damages an amount which will justly compensate him for all the detriment and injury, if any, proximately caused him by the publication of the libel. In considering what amount will so compensate him, you may consider the nature of the imputation of the libel, the extent of the publicity given to it, the circulation of the paper in which the libel was printed at the time of the publication of the libel, any special facts or features which would distinguish the paper in which it was published from an ordinary issue of a newspaper in the way of assigning to or giving it a permanent value and a continuing interest, if any, which would cause, or be likely to cause, copies of it to be preserved by those into whose possession it may have come, the influence of the paper and of the defendants, and all the natural and necessary [301] consequences of such a publication upon the plaintiff,

including injuries to his feelings, and loss of reputation, shame, or mortification, if any. The plaintiff is not required to show any special damage resulting to him. If the jury find he has been libeled, the question as to what damages they will award rests in their sound discretion.

If you find that the publication complained of was libelous, and that it was made with actual malice, you may, in your discretion, in addition to the compensatory damages I have indicated, that is, those designed to be a reparation for the injury suffered from the wrongful act, award the plaintiff exemplary damages, that is, damages designed as a punishment for the improper motive that actuated the wrongful act. Where the libel is established, a plaintiff is entitled as of right to compensatory damages; but the award of exemplary or punitive damages is wholly within the discretion of the jury and is not a matter of right.

By actual malice, or malice in fact, is meant the existence of personal hatred, ill-will, or a desire to injure on the part of the one committing the wrong. An essential element to be proven in actions of this character in order to show actual malice is that the person or persons publishing the libel either knew that the matter asserted was false or else published it in conscious disregard of whether it was true or false. Evidence of actual malice may be direct, that is, by showing acts, declarations, or conduct of the parties charged evidencing personal hatred, ill-will, or a desire to injure the complaining party; or may be indirect, that is, by showing circumstances in con-

nection with the conduct of those charged toward the complaining party from which may be directly and [302] logically inferred a wanton, willful, reckless, or heedless disregard of the rights of the latter. Actual malice, or malice in fact, is never presumed, but must be proved like any other fact in the case either directly or inferentially in the manner I have heretofore stated to you. In this regard you are to understand that the mere fact that a publication is shown to be false, and so libelous, does not alone make it malicious.

When the other elements I have indicated to you have been proven, malice on the part of a corporation may be inferred where the act of its agent is done with actual malice in the course of his employment in the business of the corporation, and is adopted or ratified by it. Such ratification may be inferred by a failure to repudiate the act of the employee upon the fact coming to its knowledge.

Before exemplary damages may be assessed against the proprietor of a newspaper for a libel published therein, it must be shown that the proprietor personally was actuated by malice either in authorizing its publication or in ratifying it after it had been informed of its publication; otherwise the malice of a reporter or editor in publishing libelous matter cannot be imputed to the proprietor nor render him liable to exemplary damages. If the proprietor conducts his paper as a reasonably prudent man would conduct it, and takes such precautions to prevent the publication of libelous articles which an ordinarily prudent man under like circum-

stances would take, exemplary damages cannot be assessed against him for a libel published in his paper if he had no personal knowledge of the publication at the time it was made, and had not, either by general or particular instructions, authorized the publication, or did not, after the publication, ratify it when knowledge of [303] it was brought to his attention.

In addition to justifying the charges complained of and alleging them to be true, the defendant Examiner Printing Company has alleged certain matters by way of mitigation of damages. Such matters are to be considered by you on the question whether that defendant, in the publications complained of, was actuated by malice.

A defendant has a legal right to justify an alleged libelous article in his answer and to allege that the statements contained therein are true, provided that he does so in good faith and with a bona fide and reasonable expectation of proving that such statements are true; and in such event the filing of such an answer would not be evidence of malice, even though the charges prove false upon the trial; but if such republication or repetition of the alleged libel in the answer is found by the jury not to have been made in good faith and with a bona fide and reasonable expectation of proving the matters asserted to be true, such republication may be considered by the jury in determining whether the libel was originally published with actual malice.

If you find that the defendant, Examiner Printing Company, at the time of the publications complained

of believed that the charges contained in such publications were true, and that it had reasonable cause for believing such charges to be true, and further find that such belief was the result of investigation from reliable sources such as a reasonable man would make, and that it published said articles believing them to be true, in such event you should exonerate that defendant from malice and award only compensatory damages against it.

Should you find that one of the defendants was actuated [304] by malice in the publication of the articles complained of but that the other defendant was not actuated by malice therein, you may, in your discretion, assess exemplary damages against the defendant whom you find was so actuated by malice, but you cannot assess that class of damages against the defendant found not actuated by such malice.

In the determination of all of the questions submitted to you, you must be guided by the evidence alone, and the legitimate inferences therefrom. You cannot find against the defendants or either of them on mere suspicion or conjecture.

Now, gentlemen of the jury, those are the specific suggestions as to the law governing the rights of these parties which it is deemed necessary to submit to you. There are certain general considerations, however, which I shall state to you and with which perhaps you are familiar.

The question of what the facts are, as deduced from the evidence in the case, is one wholly and alone for the jury; with that the Court has nothing

to do; the Court states to you the law and you must apply to law to the evidence in determining what your conclusion will be from the evidence. But you find the facts; the Court is neither privileged nor disposed in any wise to trench upon that function of the jury.

You are likewise the judges of the credibility of the witnesses. Witnesses appear upon the witness-stand and are sworn; they are presumed to speak the truth; that does not mean that they always will speak the truth; it means that unless there is something appearing which is sufficient in your judgment to induce you to believe that they have not spoken truly you should believe them; you are to observe the demeanor of a witness upon the stand, whether his evidence appears to be in [305] accord with principles of honesty and actuated by a desire to tell the truth, how far it accords with the other evidence in the case, how far it is at variance with the other evidence in the case which you are inclined to believe and in that way you make up your minds as to the degree of belief you will accord to any witness coming upon the stand. The mere positiveness of a witness in his declarations has necessarily nothing to do with the degree of credit that you are called upon to accord him; you are to judge his evidence by those manifestations which in connection with all the other evidence in the case to your mind tend to establish whether he has told the truth or otherwise. In that way you determine what the facts are in the case.

The form of verdict in the case is usually prepared

by the clerk. In this case you will have submitted to you three forms in view of the instructions I have given to you. Should you find in favor of the defendants there is a form of verdict here to indicate that. Should you find a verdict in favor of the plaintiff and against one of the defendants, and not be satisfied that the evidence warrants a verdict against the other defendant, you will simply say, 'We the jury find in favor of the plaintiff as against the defendant—naming the defendant—for so and so much damages.' That will imply that you find a verdict in favor of the other defendant; in other words, you do not find against the other defendant. If you find that the plaintiff is entitled to a verdict as against both defendants but you should find that one of them was actuated by malice in the publication and that the other one was not then you will give your verdict in terms which you will find here, making a finding that the plaintiff is entitled to compensatory damages against the two defendants and exemplary [306] damages against one defendant. The form you will find here will meet that necessity. That is in view of the charge that I gave you that if you find that one defendant was actuated by malice you will find exemplary damages against that defendant but you could not find exemplary damages against the other defendant if you find it was not actuated by malice.

You will understand that in the federal courts the verdict of the jury must be unanimous."

Thereupon the jury retired and deliberated and returned a verdict in favor of the plaintiff in the sum

of \$2,800., and upon said verdict judgment was entered against said defendants and in favor of the plaintiff in said sum and for costs amounting to \$395.15.

Thereafter, within the time allowed by law and a previous stipulation of the defendants, the time for the serving of the defendant's draft of their proposed Bill of Exceptions upon the plaintiff was extended to and including the 16th day of March, 1915, by order of court duly made and filed on February 24, 1915.

Thereafter, on the 27th day of February, 1915, and within the term at which said cause was tried and in which the judgment in said action was rendered, the above-entitled court duly gave and made and there was filed an order continuing and permitting the settlement and signing of defendants' Bill of Exceptions during the next succeeding term of court.

Thereafter, on the 16th day of March, 1915, and within the time allowed by stipulation and order of Court, the time for serving defendants' draft of their proposed Bill of Exceptions was further extended to and including the 19th day of March, 1915, [307] by stipulation and order of court duly made and filed on March 16, 1915.

Thereafter and on the 19th day of March, 1915, within the time allowed by law and stipulations of the plaintiff and the order of the Court theretofore made, the defendants served upon the plaintiff their proposed Bill of Exceptions, dated March 19, 1915.

Wherefore, defendants present the foregoing as

their Bill of Exceptions in this cause, and pray that the same may be settled and allowed and signed and certified as provided by law.

Dated March 19, 1915.

GARRET W. McENERNEY,
Attorney for Defendants.

[Stipulation Relative to Bill of Exceptions.]

IT IS HEREBY STIPULATED by the parties hereto that within the time allowed by law and a stipulation of the defendants, to wit, on April 1, 1915, the plaintiff served upon the defendants their proposed amendments to defendants' proposed Bill of Exceptions, and later, on April 6, 1915, and within the time allowed by law and the stipulation of the plaintiff, the defendants delivered their proposed Bill of Exceptions together with plaintiff's proposed amendments thereto, to the clerk of the above-entitled court for the Judge who tried said action, and that thereafter and on the 8th day of July, 1915, (no time having been designated by the said Judge for the settlement of said Bill of Exceptions) the above-entitled court duly made and gave and there was filed its order continuing the time for the settlement of said Bill of Exceptions to and including the 12th day of July, 1915, and [308] continuing and permititng the settlement and signing of said Bill of Exceptions during the term of court succeeding the term in which said order was made.

Thereafter, by the order of Court, dated July 12, 1915, the time for the settlement of said Bill of Exceptions was continued thirty days from said 12th day of July, 1915; thereafter, by order of Court

dated August 7, 1915, the time for the settlement of said Bill of Exceptions was continued fifteen days from said 7th day of August, 1915, thereafter by order of Court dated Aug. 21, 1915, the time for the settlement of said Bill of Exceptions was continued fifteen days from said 21st day of August, 1915, and thereafter, by order of Court, dated September 4, 1915, the time for the settlement of said Bill of Exceptions was continued fifteen days from said 4th day of September, 1915.

IT IS FURTHER STIPULATED that the foregoing Bill of Exceptions is correct and may be settled and allowed by the Court.

Dated September 13th, 1915.

JACOB M. BLAKE,

Attorney for Plaintiff,

GARRET W. McENERNEY,

Attorney for Defendants.

[Order Settling and Allowing Bill of Exceptions.]

The foregoing Bill of Exceptions is hereby settled and allowed.

Dated September 13th, 1915.

WM. C. VAN FLEET,

Judge.

[Endorsed]: Filed Sept. 13, 1915. Walter B. Maling, Clerk. [309]

In the District Court of the United States, for the Northern District of California, Second Division.

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Corporation, and WILLIAM RANDOLPH HEARST, Defendants.

Petition for Writ of Error.

To the Honorable, the District Court of the United States in and for the Northern District of California (Second Division):

EXAMINER PRINTING COMPANY, a corporation, and WILLIAM RANDOLPH HEARST, the defendants in the above-entitled action, feeling themselves aggrieved by the verdict of the jury and the judgment thereupon entered in favor of the plaintiff in said cause on the 4th day of February, 1915, whereby it was adjudged that the plaintiff recover of and from the defendants the sum of Two Thousand Eight Hundred Dollars (\$2800) and his costs, taxed at the sum of Three Hundred and Ninety-eight and 25/100 Dollars (\$398.25), come now by Garret W. McEnerney, Esq., their attorney, and jointly and severally petition said Court for an order allowing them to prosecute a writ of error to the Honorable, the United States Circuit Court of Appeals in and for the Ninth Circuit, under and according to the laws of the United States in that be-

half made and provided; and in this behalf allege that in said judgment and in the proceedings had prior thereto in said action certain errors were committed to the prejudice of these defendants, all of which will appear more in detail from the assignment of errors which is filed with this petition. [310]

WHEREFORE, these defendants pray that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the said Circuit Court of Appeals, and also that an order may be made by this Court fixing the amount of security which said defendants shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the said United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated June 14th, 1915.

EXAMINER PRINTING COMPANY, a
Corporation, and
WILLIAM RANDOLPH HEARST,
By GARRET W. McENERNEY,
Their Attorney. [311]

[Endorsed]: Filed June 14, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [312]

In the District Court of the United States, for the Northern District of California, Second Division.

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Corporation,
and WILLIAM RANDOLPH HEARST,
Defendants.

Assignment of Errors.

Now come the EXAMINER PRINTING COMPANY, a corporation, and WILLIAM RANDOLPH HEARST, defendants in the above-entitled action, by Garret W. McEnerney, Esq., their attorney, and specify the following as the errors upon which they will rely upon their prosecution of the writ of error in the above-entitled cause:

I.

That the District Court of the United States for the Northern District of California, Second Division, erred in denying the motions of said defendants to suppress the depositions of George A. McCarthy, William J. Wilsey and Robert Underwood Johnson, which said depositions were subsequently read in evidence by the plaintiff.

BEING EXCEPTION NO. 1.

II.

That the said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for plaintiff of the

witness Eugene J. Sullivan:

“Q. In your appearance before the Public Lands Committee, did you report to them that it would take the entire Mokelumne supply—that the so-called Bartell suppressed report took [313] in the entire Mokelumne catchment as a source of supply to the City of San Francisco and not your property singly?”

To which question the witness answered: “I did.”

BEING EXCEPTION NO. 2.

III.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness Eugene J. Sullivan:

“Mr. BLAKE.—Q. Mr. Sullivan, how much, as near as you can recollect, have you expended on the company’s water properties, in construction and in other works and matters, in order to maintain your company’s and the bondholders’ water rights and other rights since you became president of the company in 1910?”

To which the witness answered: “About \$100,000.”

BEING EXCEPTION NO. 3.

IV.

The said Court erred in overruling the objection of counsel for said defendants in the following question asked by counsel for plaintiff of the witness Eugene J. Sullivan:

“Q. Was it necessary to obtain such moneys from time to time in order that the company’s water rights and properties be maintained for

the benefit of the bondholders and stockholders of the Sierra Blue Lakes Water & Power Company of which you were the president?"

To which the witness answered: "It was."

BEING EXCEPTION NO. 4.

V.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for plaintiff of the witness Eugene J. Sullivan:

"Q. Did you consider them to be of such value that you would feel justified in paying heavy interest or making heavy sacrifices in order that you should obtain money necessary to obtain such rights and properties for your company and on behalf of your bondholders?"

[314]

To which the witness answered: "Yes, sir."

BEING EXCEPTION NO. 5.

VI.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for plaintiff of the witness Eugene J. Sullivan:

"Q. I will ask you, Mr. Sullivan, whether or not during the time since you became president of the company, you have had outstanding any options for the purchase, whether you have given any options for the purchase of your properties upon which a considerable consideration was paid down?"

To which the witness answered: "Yes, sir."

BEING EXCEPTION NO. 6.

VII.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for plaintiff of the witness Eugene J. Sullivan:

“Q. Mr. Sullivan, state to the jury whether in your first contact with the city in offering the Sierra Blue Lakes Water & Power Company’s properties for a water supply you went to them in the interest of the company or the city came to you in the interest of the city?”

To which the witness answered:

“The city engineer in October, 1910, sent a communication to the company, and in that communication he asked at what price this property could be obtained by the city.”

BEING EXCEPTION NO. 7.

VIII.

The said Court erred in overruling the objection of counsel for said defendants to the introduction in evidence of Plaintiff’s Exhibits Nos. 14 and 15, and in admitting said exhibits in evidence. Exhibit No. 14 purports to be a letter from Marsden Manson, City Engineer, to A. F. Martel, asking the latter for a statement of the price for which he would sell to [315] the city the rights of his company upon the Mokelumne River, together with a statement as to the nature and extent of those rights. Exhibit No. 15 purports to be a letter from Eugene J. Sullivan to Marsden Manson in answer to Exhibit No. 14.

BEING EXCEPTION NO. 8.

IX.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for plaintiff of the witness Eugene J. Sullivan:

“Q. What was that statement, Mr. Sullivan?”

To which the witness answered:

“He said to the audience that there was a report made by an assistant city engineer named Max J. Bartell, on the Mokelumne River, upper catchment, in which that report said that the Mokelumne River water shed would supply 400 and some odd—He stated that there was a report suppressed from the Advisory Board of Engineers, on the water supply.”

BEING EXCEPTION NO. 9.

X.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for plaintiff of the witness Eugene J. Sullivan:

“Q. I will ask you to state whether or not Mr. O’Shaughnessy took any notice of the statements made by Mr. Aston and made any reply thereto, any public reply thereto?”

To which the witness answered: “He did.”

BEING EXCEPTION NO. 10.

XI.

The said Court erred in overruling the objection of counsel for said defendants to the following ques-

tion asked by counsel for plaintiff of the witness Eugene J. Sullivan:

“Q. So far as you can recall, what was his answer to the statement that there was such a report [316] as Mr. Aston stated to be in existence?”

To which the witness answered:

“He said that Mr. Max J. Bartell was merely one of one hundred and fifty assistance.”

BEING EXCEPTION NO. 11.

XII.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for plaintiff of the witness William J. Wilsey:

“Q. 2. State whether or not in or about May 1913, you employed the plaintiff, Taggart Aston, to make an engineering report upon an hydro-electric and irrigation project in California.”

To which the witness answered: “I did.”

BEING EXCEPTION NO. 12.

XIII.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness William J. Wilsey:

“Q. 3. If you answer the last interrogatory in the affirmative, state in connection with what particular project or property you employed Mr. Aston to make such a report.”

To which the witness answered:

“Known in California as the Sierra Blue Lakes Water & Power Company.”

BEING EXCEPTION NO. 13.

XIV.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness William J. Wilsey:

“Q. 4. If you state that the project upon which said report was to be made was that connected with the Sierra Blue Lakes Water and Power Company’s properties on the Mokelumne River in California, state whether or not these properties are also known [317] as “The Sullivan Properties,” and whether or not they are the property of a company of which Mr. Eugene J. Sullivan was at that time the president.”

To which the witness answered:

“Yes, they are the same properties.”

BEING EXCEPTION NO. 14.

XV.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness William J. Wilsey:

“Q. 5. State whether or not the report made by Mr. Aston pursuant to his employment by you, was in writing; also whether or not he made more than one such report to you in connection with these properties.”

To which the witness answered:

“Yes, he made a supplemental report later which I asked him to make.”

BEING EXCEPTION NO. 15.

XVI.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness William J. Wilsey:

“Q. 7. State whether said report or reports were obtained by you, or were ever used by you, for the purpose of selling the so-called Sullivan properties on the Mokelumne River in California, to the City of San Francisco.”

To which the witness answered:

“No, I never offered anything to the city of San Francisco.

BEING EXCEPTION NO. 16.

XVII.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness William C. Wilsey: [318]

“Q 8. State whether or not said report or reports were obtained by you for use exclusively in offering said properties for sale in Europe.”

To which the witness answered: “They were.”

BEING EXCEPTION NO. 17.

XVIII.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness William J. Wilsey:

“Q. 9. If your answer to the last interrogatory is in the affirmative, state whether or not you offered said properties for sale in Europe.”

To which the witness answered:

“I did. I offered the properties for sale in Europe.”

BEING EXCEPTION NO. 18.

XIX.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness William J. Wilsey:

“Q. 10. If you answer the foregoing interrogatory in the affirmative, state whether or not Mr. Aston had an interest, contingent or otherwise, in any sale that you might make of said properties in Europe.”

To which the witness answered:

“No understanding whatever with Mr. Aston as to any commission, but I certainly intended to give him fair commission out of any work I done; but there is no written proposition of any kind. In fact, he never asked any questions.”

BEING EXCEPTION NO. 19.

XX.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness William J. Wilsey:

Q. 12. If you answer the last interrogatory in the affirmative, state whether or not you notified [319] Mr. Aston as to any particular

use or purpose for which said properties were desired by said parties in Europe, if in fact any particular use or purpose was specified.”

To which the witness answered:

“Yes, I told him what we were figuring on using the properties for, and the purposes were hydro-electric and irrigation.”

BEING EXCEPTION NO. 20.

XXI.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness William J. Wilsey:

“Q. 17. Have you in your possession any writing purporting to be an original offer addressed to Mr. Aston by Eugene J. Sullivan, as President of the Sierra Blue Lakes Water & Power Company, to sell the properties hereinbefore referred to, which said offer is dated March 10th, 1913. If so please attach the same to your answers hereto, marked as one of the Plaintiff's Exhibits.”

To which the witness answered:

“Yes, I have an offer, but as to the date mentioned I am not prepared to say until I see the original paper.”

BEING EXCEPTION NO. 21.

XXII.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness William J. Wilsey:

“Q. 18. State whether or not you know the general reputation of Taggart Aston in the engineering world, meaning thereby among consulting engineers and among construction engineers and those engaged in promoting and constructing engineering projects in this country and in Europe, or in either of said countries, for the truth and veracity of his reports as a consulting engineer.”

To which the witness answered: “Yes, I do.”

BEING EXCEPTION NO. 22. [320]

XXIII.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness William J. Wilsey:

“Q. 20. State what Mr. Aston’s reputation is in the particulars inquired about in interrogatory No. 18, in any or all of the quarters aforesaid.”

To which the witness answered:

“From all the information that I have been able to secure regarding Mr. Aston, both in America and in Europe, his reputation has been high-class.”

BEING EXCEPTION NO. 23.

XXIV.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness Richard Harte Keatinge:

“Q. Well, make a fair statement of the na-

ture of your relations with Mr. Aston at that time, from which the jury can draw the conclusion with reference to these properties and to any report which you know he made upon those properties at that time.”

To which the witness answered:

“Mr. Wilsey employed Mr. Aston to make this report—Mr. W. J. Wilsey of Portland. We paid half the expense of making the investigation, but I do not believe that Mr. Aston was ever in our employ. I don’t know whether legally he was ever in our employ. We paid half the expense and Mr. Wilsey paid the other half of the expense, but he was Mr. Wilsey’s man, I should say.”

BEING EXCEPTION NO. 24.

XXV.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness Clement H. Miller:

“Q I will ask you to state whether or not you have any recollection of Mr. Aston making a statement of what his connection was with [321] reference to having disclosed certain facts and conditions surrounding the suppression of the so-called Bartell-Manson engineering report of the city at that meeting at that time and place.”

To which the witness answered:

“Mr. Aston read quite a lengthy statement from manuscript, and I have a general recollection of the main points that were covered in

that statement. It was particularly relating to that suppressed report.”

BEING EXCEPTION NO. 25.

XXVI.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness George A. McCarthy:

“Q. If you answer the foregoing interrogatory in the affirmative, state whom you saw in connection with the object of your errand, and what was said and done between you upon that occasion in connection with said suppressed report.”

To which the witness answered:

“I saw Mr. Bartell and made known the object of my visit, which was to obtain use of, if possible, the report and documents which had been returned to his office, or if they could not be removed from the office, to make certain extracts from them. Mr Bartell produced a copy of the report and examined it in my presence, but would not allow me to again have possession of it nor to make any extracts from it.”

BEING EXCEPTION NO. 26.

XXVII.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness George A. McCarthy:

“Q. If you answer the foregoing interrogatory in the affirmative, state who were present

at such conversation or conversations, where they were held; and what was said or done there, with reference to said report. Did you see the original [322] of said report then and there in the possession of Mr. Bartell?"

To which the witness answered:

"The only conversation I had with Mr. Bartell regarding the report was on the occasion of my visit to his office in June, when I again endeavored to obtain the document for purposes of reference. No person was present except Mr. Bartell, and he refused to allow the document to again go out of his office or to allow any extracts to be made from it. Mr. Bartell produced the copy of the report, but to the best of my knowledge it was not the copy we had in the office of Mr. Taggart Aston. The original contained many marginal notes in pencil which the copy produced by Mr. Bartell did not contain, to the best of my knowledge."

BEING EXCEPTION NO. 27.

XXVIII.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness George A. McCarthy:

"Q. State whether or not said Bartell-Manson report, together with the maps, plats, diagrams and plans therein referred to or therein attached, showed upon its face that it was prepared by a competent, skilful and conscientious member of the engineering profession."

To which the witness answered:

“The report with the plats and diagrams showed that it had been very carefully prepared.”

BEING EXCEPTION NO. 28.

XXIX.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness George A. McCarthy:

“Q. State whether or not, if you know, the information and data shown thereby was sufficiently full, complete, and in sufficient detail, to comply, from an engineering standpoint, with the requirement placed upon the City of San Francisco by the Secretary of the Interior of the United [323] States of America, that it, the said city should proceed, at its own cost and expense and with due diligence, to secure data upon which to make the determination mentioned in Interrogatory No. 20.”

To which the witness answered: “I believe it was.”

BEING EXCEPTION NO. 29.

XXX.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness Stanley Behneman:

“Q. Will you state in your own way the facts and circumstances in connection with that episode?”

To which the witness answered:

“It was shortly before one o’clock. This gentleman I did not know at the time when he entered the door; he made certain demands—he said he was from the engineering department of the City of San Francisco and he wished to have certain records and plans which Mr. Aston had taken. I don’t know under what condition they were taken. He wanted them right away, or he would have a warrant issued for them. He appeared to be very excited. He wanted to know when Mr. Aston would return. I told him I did not know. He said he would wait a while. He did wait quite a while and then he decided to go and he said that these documents must be back by one o’clock.”

BEING EXCEPTION NO. 30.

XXXI.

The said Court erred in overruling, the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness Taggart Aston:

“Q. I will ask you now to state what considerations moved you to make any communications which you may have made to members of Congress in relation to this report?”

To which the witness answered:

“My main reason, although I had several reasons, was the fact that I had received from Mr. Wilsey copies of I think two letters from gentlemen, one in London and another in Paris, in which they said that they had heard—they were

connected, [324] they were Mr. Wilsey's associates who were going to endeavor to finance this proposition and were therefore greatly interested—in which they said that a Mr. Freeman had made a report and that they both intended writing to Mr. Freeman, and they were anxious to see his report, so that they would get information from that source as well as from my report. Now, upon an examination of the Freeman report, I found that Mr. Freeman, not only in his own report, but in his discussion of other reports—both in discussion and in extracts from other reports which were included in his main report, had grossly misrepresented the Mokelumne supply to such an extent that it would have been quite impossible for us to have financed our project in France, particularly when such an eminent gentleman as Mr. Freeman, and who was so well known in Europe, had made statements that there was not the supply that I in my report had claimed. I concluded that Mr. Freeman, being an eminent engineer and myself only a comparatively obscure engineer, I concluded that his report would be given much greater weight than mine. I knew from my own surveys, as well as from the suppressed report, as well as from conclusions of Mr. Manson, that this supply was sufficient and that there was the water there. I therefore came to the conclusion that in duty to my clients these misrepresentations had to be removed and that the Freeman report had done my clients very grave injustice.”

BEING EXCEPTION NO. 31.

XXXII.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness Taggart Aston:

“Q. Now, I will ask you, Mr. Aston, to state briefly what you may have done in calling upon the city, as is stated here in this letter, in company with Mr. Hart and Mr. Burleson, and state whether or not you were then shown a copy of the so-called Bartell-Manson report with the essential statement referred to in your letter here?”

To which the witness answered:

“On account of my assistant, Mr. McCarthy, having informed me that he had noticed in the copy shown to him by Mr. Bartell that this essential statement, which of course was the whole gist of this report which had affected me in communicating with Washington—on account of Mr. McCarthy having told me that he had not seen this essential statement in the copy which Mr. Bartell showed to him, I informed [325] the president of the board of health, Mr. Barendt, who called at my office,—I had never known him before, I informed him that I believe that the city was now showing a copy which they purported to be this report, in which they had eliminated this very essential statement made by Mr. Manson, the city engineer, Mr. Barendt, on the 8th day of July, went up to Mr.

Judell, his fellow-official. By reason of what was told me by Mr. Barendt on his return, I requested Mr. Barendt to go back with me to Mr. Judell in order that I could further investigate what Mr. Barendt had told me regarding it, which coincided with what Mr. Bartell had told me. Mr. Judell had shown Mr. Barendt this report. I went with Mr. Barendt to Mr. Judell's office. Mr. Barendt introduced me to Mr. Judell. Mr. Judell was the president of the board of works. He was at the head of all the engineering department. As the chief official, responsible for the city, I told Mr. Judell that I would like to see this report, as I wished, if I found this elimination had been made, I wished to make the charge that the elimination had been made. I asked Mr. Judell would he kindly do as he had done with Mr. Barendt, show me that report as the chief of the public works department and chief of the engineers' department. Mr. Judell said, "I will not show you that report, because we are not going to help the enemies of Hetch Hetchy." Then I asked Mr. Judell would the engineering department show it to me. He said he could not speak for the engineering department. . . . On account of that, I asked Mr. Barendt to come up with me to the engineering department. Mr. Barendt said, "this will get me in bad with the department if I pursue this matter any further."

BEING EXCEPTION NO. 32.

XXXIII.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness Taggart Aston:

“Q. State whether or not you had occasion to make any public statements with reference to the matter of this report and of your interest in disclosing the fact of it on November 5, 1913, before the Civic Center meeting at the St. Francis?”

To which the witness answered:

“I had asked Mr. O’Shaughnessy to give me ten or fifteen minutes to look into the Mokelumne matter, and I told him that I thought that after he had heard and seen my data on it I was sure that he would personally remove the misrepresentations [326] made regarding it in the previous report. This was in a conversation over the ‘phone. It was either the day before or two days before the Civic Center meeting. Mr. O’Shaughnessy replied very sharply that he was too busy, he would give me no time. As this was the first public meeting at which anyone had an opportunity to remove certain exceptions that had been planted in the people’s mind by the fact of the newspapers not publishing anything but one side of the matter, I therefore decided that it was the proper opportunity for me to tell the public my view of the question, especially as the ‘Examiner’ and others had re-

ferred to me as Mr. Sullivan's engineer and had connected me with him in the matter, and in a manner that I did not approve of. I therefore wrote out a speech which I delivered at the meeting. It was a meeting at which both sides were heard, and at which discussion was had on the various papers. I therefore wrote out a speech and delivered that speech. I afterwards had it printed and sent it to each of the senators before this libel was published. I have an acknowledgment from senators in regard to having received the printed document which is a true copy of the written-out speech that I had made at the time."

BEING EXCEPTION NO. 33.

XXXIV.

The said Court erred in overruling the objection of counsel for said defendants to and in admitting in evidence a copy of the San Francisco Examiner of Thursday, November 6, 1913, purporting to give an account of the proceedings of the Civic Center meeting of November 5, 1913, and what was said and done by the various speakers of said meeting.

BEING EXCEPTION NO. 34.

XXXV.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness Taggart Aston:

"Q. Did you make any statement at that time and place with reference to the fact that this

supply from the Mokelumne had been discriminated against in various city reports?"

To which the witness answered—"Yes, sir." [327]

BEING EXCEPTION No. 35.

XXXVI.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness Taggart Aston:

"Q. State in what points you made the statement that the supply had been discriminated against."

To which the witness answered:

"I stated that the city's reports had been biased in that they made unfair comparisons, they minimized our sources, supplies and estimates of our sources, and exaggerated the estimates of other sources and thus made a false and unfair comparison with the Hetch Hetchy project. In particular, I mentioned one instance where in Mr. Freeman's report, in a very essential item, the item of concrete in the Hetch Hetchy dam as compared with the Mokelumne dams, he priced the Mokelumne dam—"

BEING EXCEPTION NO. 36.

XXXVII.

The said Court erred in overruling the objection of counsel for said defendants and in admitting in evidence a copy of the San Francisco "Examiner" of November 30, 1913, purporting to contain a statement respecting the proposed Washington edition

of said San Francisco "Examiner," about to be published.

BEING EXCEPTION NO. 37.

XXXVIII.

The said Court erred in overruling the objection of counsel for said defendant William Randolph Hearst and in admitting the evidence over the objection of said defendant the exhibit mentioned in the last preceding assignment of error.

BEING EXCEPTION NO. 38. [328]

XXXIX.

The said Court erred in denying the motion of counsel for said defendants to strike out the testimony of witness Thomas R. Marshall with respect to a conversation between the witness and John Temple Graves concerning the Hetch Hetchy bill, and the request of Mr. Graves that the witness give him a written statement to the effect that the witness would vote for the Hetch Hetchy Bill if the matter came up to him.

BEING EXCEPTION NO. 39.

XL.

The said Court erred in overruling the objection of counsel for said defendants to and in admitting in evidence an article in the San Francisco "Examiner" of December 1st, 1913, purporting to be a newspaper dispatch under the headline "Marshall for Hetch Hetchy. Vice-president will cast vote for water bill if necessary. Gives views to the 'Examiner.' Writes for special edition that it to be printed in Washington." Said dispatch contained a purported statement from Hon. Thomas R.

Marshall, Vice-president of the United States, giving his reasons for supporting the Hetch Hetchy Bill.

BEING EXCEPTION NO. 40.

XLI.

The said Court erred in overruling the objection of counsel for said defendants and admitting in evidence the matter in the article of the San Francisco "Examiner" of December 1st, 1913, immediately following the purported dispatch referred to in the last preceding assignment of error, which succeeding matter purports to be a statement concerning the proposed Washington edition of the San Francisco "Examiner" and the manner in which it would be distributed.

BEING EXCEPTION NO. 41. [329]

XLII.

The said Court erred in overruling the objection of counsel for said defendants to and admitting in evidence a copy of the "Arizona Gazette," a newspaper of July 7, 1913, purporting to contain a Washington dispatch under the heading "Hetch Hetchy Chicanery," and stating that Eugene J. Sullivan of San Francisco had before the House Public Lands Committee made charges of chicanery suppression of report and political bias of the engineers in the interest of the Hetch Hetchy project for supplying San Francisco with water.

BEING EXCEPTION NO. 42.

XLIII.

The said Court erred in overruling the objection of counsel for said defendants to and admitting in

evidence a copy of the "Evening World-Herald" newspaper of Omaha, Nebraska, dated July 7, 1913, containing an article under the heading "Alleges crookedness in Hetch Hetchy plan," and which said article was practically identical with the article referred to in the last preceding assignment of error.

BEING EXCEPTION NO. 43.

XLIV.

The said Court erred in overruling the objection of counsel for said defendants to and admitting in evidence a copy of the "Herald Republican" newspaper of Salt Lake City, Utah, dated July 8, 1913, containing an article headed "Charges Chicanery in Hetch Hetchy Project," which said article was practically identical with the article referred to in the last preceding assignment of error.

BEING EXCEPTION NO. 44. [330]

XLV.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness Robert Underwood Johnson:

"Q. 8. Will you please state whether or not on the occasion hereinbefore referred to before the Committee on Public Lands in the United States Senate, you spoke of Mr. Aston as 'Sullivan's man Aston,' or whether or not you spoke of Mr. Aston in connection with any Mr. Sullivan upon that occasion."

To which the witness answered:

"I never spoke of Mr. Aston as 'Sullivan's man Aston,' nor in connection with Sullivan

except as appears in the foregoing statement, Mr. Sullivan being under consideration by the Committee.”

BEING EXCEPTION NO. 45.

XLVI.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness Robert Underwood Johnson:

“Q. 9. Also, please state if upon the occasion last referred to, you characterized anything or matter, on the authority of Mr. Aston, as ‘a bad jobbery.’ ”

To which the witness answered: “I never did.”

BEING EXCEPTION NO. 46.

XLVII.

The said Court erred in overruling the objections of counsel for said defendants to and admitting in evidence Plaintiff’s Exhibit No. 44, purporting to be certified copies of certificates filed with the post-office authorities for the purpose of showing the proprietorship and ownership of the San Francisco “Examiner” of San Francisco, California, the Los Angeles “Examiner” of Los Angeles, California, the Atlanta “Georgian” of Atlanta, Georgia, the Chicago “Evening American” of Chicago, Illinois, the Boston [331] “American,” of Boston, Mass., and the New York “Evening Journal” of New York, N. Y. Said certificates purport to show that all of the papers referred to are published by corporations with the exception of the Los Angeles “Examiner,” which is published by William Randolph Hearst,

and that said William Randolph Hearst is the only person named as owner of stock of the corporations owning the other papers mentioned.

BEING EXCEPTION NO. 47.

XLVIII.

The said Court erred in overruling the objection of counsel for defendants to the following question asked by counsel for the plaintiff of the witness C. E. Grunsky.

“Q. With reference to your employment at or about this time to furnish a report of the run-off from Alameda Creek proper of the Spring Valley Water Company, that report of yours was turned in when?”

To which the witness answered:

“The statement I made this morning with reference to turning in everything to the Army Board related to the matter that bore upon the report that was then under discussion.”

BEING EXCEPTION NO. 48.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness C. E. Grunsky:

“Do you know what became of that report of yours that you turned in? Did it go to the Army Board?”

To which the witness answered:

“The report was delivered very late. I don't remember the date. I haven't had occasion to look at it for a long time. I think that was delivered some time in October or November.”

BEING EXCEPTION NO. 49. [332]

L.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness C. E. Grunsky:

“Q. Were your conclusions upon that investigation favorable or unfavorable to the Spring Valley Water Company’s contention?”

To which the witness answered:

“I cannot say as to whether it was favorable or unfavorable to the city or to the Spring Valley Water Company. The finding with reference to the quantity of water flowing in Alameda Creek was not at great variance with what was claimed by the Spring Valley Water Company.”

BEING EXCEPTION No. 50.

LI.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness William F. Bade:

“Q. And Mr. Freeman was there in the representative capacity of furnishing or accounting for the furnishing of data which the Secretary had called for under the order of the continuance, the show cause order?”

To which the witness answered:

“Mr. Freeman expressly stated he was representing the city officials, and Mr. Fisher so accepted it.”

BEING EXCEPTION NO. 51.

LII.

The said Court erred in overruling the objection of counsel for said defendants to the following questions asked by counsel for the plaintiff of the witness William F. Bade:

“Q. State whether or not anything came out at that hearing with reference to any suppressed report which had not been furnished up to the date of that hearing.” [333]

To which the witness answered: “Yes, sir.”

BEING EXCEPTION NO. 52.

LIII.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness William F. Bade:

“Q. State what if anything appeared at this hearing as coming from the city, or the representative of the City of San Francisco, which showed that there was in existence a report with reference to any available water supply to San Francisco which had not reached the Army Board or the Secretary of the Interior up to that time.”

To which the witness answered:

“On the complaint of Mr. McCutcheon to Secretary Fisher that the Marks-Grunsky-Hyde report, that they had never been permitted access to it although repeated requests had been made; upon that presentation by Mr. McCutcheon Secretary Fisher asked for that

report, if there was such a report—asked Mr. Freeman, representing the city. Mr. Freeman then produced the report and said it was the only copy he had, and turned it over to Secretary Fisher, and he to the Advisory Army Board who also stated that they had not had access to it.”

BEING EXCEPTION NO. 53.

LIV.

The said Court erred in overruling the objection of counsel for said defendants to the following question asked by counsel for the plaintiff of the witness William F. Bade:

“Q. What did Mr. Freeman say?”

To which the witness answered:

“Mr. Freeman then handed over the report and said it was the only copy he had, but he was willing to turn it over to Secretary Fisher and the Army Board.”

BEING EXCEPTION NO. 54.

The said Court erred in denying the motion of counsel for [334] said defendants to strike out all of the testimony of the witness William F. Bade with respect to the proceedings before Secretary of the Interior Fisher with respect to which the witness had testified that he was present at the meeting and that a charge had been made by officials of the Spring Valley Water Company that they had been denied access to a report made by C. E. Grunsky to J. R. Freeman with respect to certain properties of the Spring Valley Water Company, whereupon Secretary Fisher had asked about the report

and the same was produced by Mr. Freeman, handed to Secretary Fisher and by him handed to the Board of Army Engineers.

BEING EXCEPTION NO. 55.

LVI.

The said Court erred in overruling the objection of counsel for said defendants to and admitting in evidence Plaintiff's Exhibit No. 27, purporting to be matter copied from a paster on a map in the Bartell-Manson report, which paster purported to show a draw-off in the North Fork Reservoir 86 feet above the bottom of the reservoir.

BEING EXCEPTION NO. 56.

WHEREFORE, the said defendants pray that the judgment in favor of the plaintiff herein and against the defendants be reversed and that the said District Court of the United States in and for the Northern District of California, Second Division, be directed to grant a new trial of said cause.

GARRET W. McENERNEY,
Attorney for Plaintiffs in Error (Defendants in
the Court Below.) [335]

[Endorsed]: Filed June 14, 1915. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[336]

*In the District Court of the United States, for the
Northern District of California, Second Division.*

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Corporation,
and WILLIAM RANDOLPH
HEARST,

Defendants.

Order Allowing Writ of Error.

Upon motion of Garret W. McEnerney, Esq., Attorney for the defendants in the above-entitled action, and upon the filing of a petition for writ of error and an assignment of errors herein,

IT IS HEREBY ORDERED that a writ of error as prayed for in said petition be allowed and that the amount of the supersedeas bond to be given by the defendants upon said writ of error be and the same is hereby fixed at the sum of Four Thousand (\$4000.) Dollars, and that upon the giving of said bond all further proceedings in this court be suspended, stayed and superseded pending the determination of such writ of error by the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated June 14th, 1915.

WM. C. VAN FLEET,
Judge. [337]

[Endorsed]: Filed June 14, 1915. W. B. Mal-
ing Clerk. By J. A. Schaertzer, Deputy Clerk.
[338]

*In the District Court of the United States, for the
Northern District of California, Second Divi-
sion.*

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Corpora-
tion, and WILLIAM RANDOLPH
HEARST,

Defendants.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That Examiner Printing Company, a corporation,
and William Randolph Hearst, as principals, and
Hartford Accident and Indemnity Company, a cor-
poration, as surety, are jointly and severally held
and firmly bound unto the plaintiff in the above-
entitled action in the sum of Four Thousand Dol-
lars (\$4000.00), to which payment well and truly to
be made we bind ourselves and each of us jointly
and severally, and each of our successors, represen-
tatives and assigns, firmly by these presents.

SIGNED with our seals and dated this 14th day
of June, 1915.

WHEREAS, the above-named defendants are
about to sue out a writ of error to the United States

Circuit Court of Appeals in and for the Ninth Circuit to reverse the judgment heretofore rendered in the above-entitled action, in favor of the plaintiff therein and against the defendants therein, and awarding judgment in favor of the plaintiff therein for the sum of Two Thousand Eight Hundred Dollars (\$2,800) and for costs in the sum of Three Hundred and Ninety-eight and 25/100 Dollars (\$398.25.) [339]

NOW, THEREFORE, the conditions of this obligation *is* such that if the above-named defendant shall prosecute such writ of error to effect and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void, otherwise to remain in full force and effect.

EXAMINER PRINTING COMPANY, a
Corporation,

By W. F. BOGART,
Secy. & Treas.

HARTFORD ACCIDENT AND INDEMNITY COMPANY, (Seal)

A Corporation.

By JOY LICHTENSTEIN,
Manager.

The foregoing bond is hereby approved this 14th day of June, 1915.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed June 14, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[340]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,780.

TAGGART ASTON,

Plaintiff,

vs.

EXAMINER PRINTING COMPANY, a Corpora-
tion, and WILLIAM RANDOLPH
HEARST,

Defendants.

I, WALTER B. MALING, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing three hundred forty(340) pages, numbered from 1 to 340, inclusive, to be a full, true and correct copy of the record and proceedings in the above-entitled cause, as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is \$253.20; that said amount was paid by Garret W. McEnerney, attorney for defendants, and that the original writ of error and citation issued in said cause are hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District

Court, this 1st day of November, A. D. 1915.

[Seal] WALTER B. MALING,
Clerk U. S. District Court, Northern District of
California.

[Ten Cent Internal Revenue Stamp. Canceled
Nov. 1, 1915. W. B. M.] [341]

[Writ of Error (Original).]

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to
the Honorable, the Judges of the District Court
of the United States for the Northern District
of California, Second Division, Greeting:

Because, in the record and proceedings, as also in
the rendition of the judgment of a plea which is in
the said District Court, before you, or some of you,
between Examiner Printing Company, a corpora-
tion, and William Randolph Hearst, Plaintiffs in
Error, and Taggart Aston, defendant in error, a
manifest error hath happened, to the great damage
of the said Examiner Printing Company, a corpora-
tion, and William Randolph Hearst, plaintiffs in er-
ror, as by their complaint appears:

We, being willing that error, if any hath been,
should be duly corrected, and full and speedy justice
done to the parties aforesaid in this behalf, do com-
mand you, if judgment be therein given, that then,
under your seal, distinctly and openly, you send the
record and proceedings aforesaid, with all things
concerning the same, to the United States Circuit
Court of Appeals for the Ninth Circuit, together
with this writ, so that you have the same at the City

of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the United States, the 14th day of June, in the year of our Lord one thousand nine hundred and fifteen.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern
District of California.

By J. A. Schaertzer,
Deputy Clerk.

Allowed by

WM. C. VAN FLEET,
United States District Judge. [342]

Receipt of a copy of the within Writ of Error is hereby admitted this 16th day of June, 1915.

JACOB M. BLAKE,
Attorney for Defendant in Error.

The answer of the Judges of the District Court of the United States, in and for the Northern District of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned at the

day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

WALTER B. MALING,
Clerk.

[Endorsed]: No. 15,780. United States District Court for the Northern District of California, Second Division. Examiner Printing Co. et al., Plaintiffs in Error, vs. Taggart Aston, Defendant in Error. Writ of Error. Filed Jun. 18, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[**Citation on Writ of Error (Original).**]

UNITED STATES OF AMERICA,—ss.

The President of the United States to Taggart Aston, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, Second Division, wherein Examiner Printing Company, a corporation, and William Randolph Hearst are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why

speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 14th day of June, A .D. 1915.

WM. C. VAN FLEET,
United States District Judge. [343]

United States of America,—ss.

On this 18th day of June, in the year of our Lord one thousand nine hundred and fifteen, personally appeared before me, John E. Manders, a notary public, the subscriber, William J. Brennan, and makes oath that he delivered a true copy of the within citation to Taggart Aston, at the office of his attorney, J. M. Blake, Mills Building, San Francisco, California.

WILLIAM J. BRENNAN.

Subscribed and sworn to before me at San Francisco, this 28th day of June, A. D. 19—.

[Seal] JOHN E. MANDERS,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: No. 15,780. United States District Court for the Northern District of California, Second Division. Examiner Printing Co., et al., Plaintiffs in Error, vs. Taggart Aston, Defendant in Error. Citation on Writ of Error. Filed Jun. 18, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 2672. United States Circuit Court of Appeals for the Ninth Circuit. Examiner Printing Company, a Corporation, and William Randolph Hearst, Plaintiffs in Error, vs. Taggart Aston, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Northern District of California, Second Division.

Filed November 3, 1915.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

**Order Enlarging Time [to August 9, 1915] for Filing
Record.**

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

EXAMINER PRINTING COMPANY, a Corpora-
tion, and WILLIAM RANDOLPH HEARST,
Plaintiffs in Error,

vs.

TAGGART ASTON,

Defendant in Error.

It appearing to the Court that the plaintiffs in error have heretofore prepared and served their proposed bill of exceptions in the above-entitled action and that the defendant in error has served his proposed amendments thereto, and that said proposed bill of exceptions and said proposed amendments

have heretofore been delivered to the clerk of the District Court of the United States in and for the Northern District of California, Second Division, but that said bill of exceptions has not yet been settled, and good cause appearing therefor,

IT IS HEREBY ORDERED that said plaintiffs in error may have and they are hereby granted to and including the 9th day of August, 1915, within which to file the record in the above-entitled action with the clerk of the above-entitled court at San Francisco, California, and to docket said case with said clerk.

Dated July 12, 1915.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Original. In the United States Circuit Court of Appeals for the Ninth Circuit. Examiner Printing Company, a Corporation, and William Randolph Hearst, Plaintiffs in Error, vs. Taggart Aston, Defendant in Error. Order Enlarging Time for Filing Record. Filed Jul. 12, 1915. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

EXAMINER PRINTING COMPANY, a Corporation,
and WILLIAM RANDOLPH HEARST,
Plaintiffs in Error,

vs.

TAGGART ASTON,

Defendant in Error.

**Order Enlarging Time [to September 9, 1915] for
Filing Record.**

It appearing to the Court that the plaintiffs in error have heretofore prepared and served their Proposed Bill of Exceptions in the above-entitled action, and that the defendant in error has served his Proposed Amendments thereto, and that said Proposed Bill of Exceptions and said Proposed Amendments have heretofore been delivered to the clerk of the District Court of the United States in and for the Northern District of California, Second Division, but that said Bill of Exceptions has not yet been settled; and good cause appearing therefor,

IT IS HEREBY ORDERED that said plaintiffs in error may have and they are hereby granted to and including the 9th day of September, 1915, within which to file the record in the above-entitled action with the clerk of the above-entitled court at San Francisco, California, and to docket said case with said clerk.

Dated August 7th, 1915.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Original. In the United States Circuit Court of Appeals for the Ninth Circuit. Examiner Printing Company, a Corporation, et al., Plaintiffs in Error, vs. Taggart Aston, Defendant in Error. Orders Enlarging Time for Filing Record. Filed Aug. 7, 1915. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

EXAMINER PRINTING COMPANY, a Corpora-
tion, and WILLIAM RANDOLPH HEARST,
Plaintiffs in Error,

vs.

TAGGART ASTON,

Defendant in Error.

**Order Enlarging Time [to October 8, 1915] for
Filing Record.**

It appearing to the Court that the plaintiffs in error have heretofore prepared and served their Proposed Bill of Exceptions in the above-entitled action, and that the defendant in error has served his Proposed Amendments thereto, and that said Proposed Bill of Exceptions and said Proposed Amendments have heretofore been delivered to the clerk of the District Court of the United States in and for the Northern District of California, Second Division, but that said Bill of Exceptions has not yet been settled; and good cause appearing therefor,

IT IS HEREBY ORDERED that said plaintiffs in error may have and they are hereby granted to and including the 8th day of October, 1915, within which to file the record in the above-entitled action with the clerk of the above-entitled court at San Francisco, California, and to docket said case with said clerk.

Dated September 4th, 1915.

BLEDSON, J.,
Judge.

[Endorsed]: Original. In the United States Circuit Court of Appeals for the Ninth Circuit. Examiner Printing Company, a Corporation, et al., Plaintiffs in Error, vs. Taggart Aston, Defendant in Error. Order Enlarging Time for Filing Record. Filed Sep. 4, 1915. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

EXAMINER PRINTING COMPANY, a Corporation,
and WILLIAM RANDOLPH HEARST,
Plaintiffs in Error,

vs.

TAGGART ASTON,

Defendant in Error.

**Order Enlarging Time [to November 8, 1915] for
Filing Record.**

Good cause appearing therefor, IT IS HEREBY ORDERED that the plaintiffs in error may have, and they are hereby granted, to and including the 8th day of November, 1915, within which to file the record in the above-entitled action with the clerk of the above-entitled court at San Francisco, California, and to docket said case for said court.

Dated October 6, 1915.

WM. W. MORROW,
Judge.

[Endorsed]: Original. In the United States Circuit Court of Appeals for the Ninth Circuit. Examiner Printing Company, a Corporation, et al., Plaintiffs in Error, vs. Taggart Aston, Defendant in Error. Order Enlarging Time for Filing Record. Filed Oct. 6, 1915. F. D. Monckton, Clerk.

No. 2672. United States Circuit Court of Appeals for the Ninth Circuit. Four Orders Under Rule 16 Enlarging Time to Nov. 8, 1915, to File Record Thereof and to Docket Case. Refiled Nov. 3, 1915. F. D. Monckton, Clerk.

